

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
) No. SA:08-CR-301
vs.)
) San Antonio, Texas
STEVEN LYNN MOUTON,)
Defendant.)
October 5, 2009
-----)

VOLUME 1 OF 2

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

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1 (October 5, 2009, defendant present.)

2 THE COURT: Thank you. Please be seated.

3 07-CR-301, United States of America versus Steve Lynn Mouton.

4 Is it Mouton? Mouton?

5 THE DEFENDANT: Mouton.

6 THE COURT: Mouton. Appearances, please.

7 MS. BRAUN: Your Honor, Tracy Braun and Sarah
8 Wannarka on behalf of the United States.

9 MR. BASILE: Karl Basile on behalf of Mr. Mouton,
10 Your Honor.

11 THE COURT: Where are we at?

12 MS. BRAUN: Your Honor, for the record, also sitting
13 at counsel table is Special Agent Larry Baker with the FBI.

14 The government wanted just some clarification on the
15 Court's granting of the motion in limine. The way we
16 understand that is that any allegations -- or sexual
17 misconduct on behalf of the defendant prior to this case will
18 not be mentioned, and we don't an -- we will not mention that.

19 THE COURT: Well, first of all, I mean, it is a
20 motion in limine, so it is not an evidentiary ruling. All I
21 am asking is, if you are going to raise those kind of issues,
22 the motion in limine is granted, and you need to approach the
23 bench before, so let's not misconstrue what my ruling is. It
24 is not an evidentiary ruling.

25 MS. BRAUN: Just to be clear, we don't anticipate

1 putting in any evidence of his prior sexual misconduct. We do
2 anticipate putting in evidence of the fact that he is on -- is
3 and was on probation in October of 2007, which explains why
4 the probation officers came to his house.

5 We have instructed our witnesses not to mention why
6 he was on probation or any information regarding the deferred
7 prosecution or any other allegations of sexual misconduct,
8 just so that the record is clean, and they have all been
9 notified of such.

10 THE COURT: Okay. Mr. Basile, anything?

11 MR. BASILE: Your Honor, I would just ask, before
12 they actually go into it, like the Court said, go to the
13 bench. I may have some concerns depending on how they want to
14 approach that he is on probation, because, again, just knowing
15 someone is on probation, I think, could taint the jury, and I
16 understand that doesn't always make it inadmissible, but I
17 would like to find out -- I would like a little time -- a
18 little more detail on what they plan on presenting by that
19 witness, so I can make any point of objections on certain
20 issues that I may have problems with.

21 THE COURT: Yes. The trouble is, when I have to do
22 this balancing that I need to do, with the result of 404, I
23 have got to determine the probative value and whether or not
24 that probative value is substantially outweighed by potential
25 for unfair prejudice.

1 What I am trying to do is strike a balance here, and
2 the balance that I am striking is that, as far as the motion
3 in limine, it is granted, that any underlying sexual offenses
4 won't come in, and in all likelihood -- I am not making any
5 advanced evidentiary rulings, but in all likelihood, I would
6 not let in any of the past underlying criminal convictions,
7 because that would be too unduly prejudicial.

8 However, in striking this balance, though, I have
9 got to let the government say that he was on probation. I am
10 not going to let them say why, because, otherwise, the jury is
11 going to be left wondering, why did they come in? What basis
12 did they have to come to the house? And the jury would get
13 confused by, was there any kind of an issue of improper
14 search?

15 So as I am striking that balance, that is how I have
16 struck it. So a discussion of, he was on probation, and
17 that's why I came in, but nothing further is where we are at.

18 MS. BRAUN: And, Your Honor, our first witness will
19 be David Gonzales, who is one of the probation officers. He
20 will talk about it. Next will be Kendall Gebauer, from the
21 sheriff's office, who was also present when they did the home
22 visit at the defendant's house.

23 He will mention that he was on probation, in
24 explaining why he was there. And then Shawn Hiler from the
25 Department of Family and Protective Services will mention that

1 the defendant was on probation.

2 THE COURT: Well, why do we have to have it
3 mentioned three times? Why can't we establish by the first
4 witness that he was on probation? Why do we need it
5 reinforced?

6 MS. BRAUN: It may not need to be reinforced with
7 Investigator Hiler, but Deputy Gebaur will explain that he
8 often accompanies the probation department to go out, because
9 they are not allowed to carry weapons, and he is, and for
10 everybody's safety --

11 THE COURT: Well, I am not sure we need to do all of
12 that either. I mean, what is he going to say? I mean, let's
13 just get to the nut -- the gist of what his testimony is going
14 to be. What is the gist of his testimony? That defendant
15 told him XYZ?

16 MS. BRAUN: Well, starting with David Gonzales, the
17 probation officer, that he went there. The defendant is on
18 probation. I am also going to have him state that as a
19 probation officer, he is allowed to go into somebody's home
20 and he is allowed to look at the computer, so that the jury
21 doesn't wonder if he is overstepping his bounds, and that he
22 looked at the computer and found pictures of children, and he
23 is going to leave that alone, as to the fact that that, in and
24 of itself, was a violation, because that would go to why he is
25 on probation, but then he will talk about finding the picture

1 of this little girl's vagina and what he did with that.

2 THE COURT: Right. And all I am saying is, I think
3 you can do everything you are attempting to do without
4 overemphasis of the probation. You can say: You know, why
5 were you there?

6 Well, he is on probation, and as a result of
7 probation, we make periodic visits. And just after that first
8 discussion, I don't think it needs to be brought up any more
9 that he was on probation, and I certainly don't think we need
10 to have a law enforcement officer talking about how he has to
11 carry a gun for protection. That is not an issue here either.

12 So after the first witness talks about probation, no
13 further mention of probation, and no further mention about the
14 gun and the necessity for a weapon.

15 From what I know of this case, I am very confident
16 that you all are going to be able to do what you need to do
17 without complicating this matter for appellate purposes.

18 Anything further?

19 MR. BASILE: No, Your Honor. I just had an
20 agreement with one of the other U.S. Attorneys on the
21 forfeiture, that we are going to hold that off, but she is not
22 here right now.

23 MS. WANNARKA: Your Honor, AUSA Mary Nelda
24 Valadez --

25 THE COURT: Who is just walking through the door.

1 MS. WANNARKA: She mentioned there is an agreement
2 with regard to the forfeiture, and she said there is a matter
3 to put on the record in that regard.

4 MS. VALADEZ: I really didn't time it that way, but
5 here I am. Good morning. Mary Nelda Valadez for the United
6 States, Your Honor.

7 I spoke to Mr. Bastille briefly on Friday afternoon,
8 I believe it was, and he did say that the forfeiture matter
9 would be left for the Court to decide at sentencing and would
10 not need the jury to decide the issue, but I am here to make
11 sure that that is correct.

12 MR. BASILE: That is correct, Your Honor. I did
13 receive a proposed jury charge on that, but there will be no
14 need for that, since we are in agreement to let the Court
15 decide that at sentencing, instead of the jury.

16 THE COURT: If there is a sentencing.

17 MR. BASILE: Yes.

18 THE COURT: Okay. Anything further we need to take
19 up? Do we have any idea where we are at with the jury?

20 COURTROOM DEPUTY: I have been calling and there is
21 no answer.

22 THE COURT: Okay. You might want to go downstairs
23 and figure out what is going on. I think our resources are
24 being taxed with all of Garcia's jurors. Stand by and we will
25 let you know as soon as possible.

1 In the interim, why don't you flip your chairs
2 towards the panel and -- but don't go anywhere. Okay.

3 MR. BASILE: Your Honor --

4 COURTROOM SECURITY OFFICER: All rise.

5 THE COURT: I'm sorry.

6 COURTROOM SECURITY OFFICER: Did you want to talk to
7 him?

8 THE COURT: Do we need something?

9 MR. BASILE: Nothing with this case, Your Honor. I
10 had been set on a detention hearing up in Judge Mathy's court.
11 I called them Friday and told them that I was set for trial
12 here, and they apparently want me to make a quick appearance
13 and announce on the record.

14 THE COURT: What day is this?

15 MR. BASILE: Today.

16 THE COURT: At what time?

17 MR. BASILE: At 10:00 o'clock. I just want to let
18 the Court know. I know that your deputy has already
19 corresponded back and forth by e-mail a couple of times with
20 them.

21 COURTROOM DEPUTY: They asked that he go up and put
22 on the record -- he can go right now.

23 THE COURT: Yes. Why don't you go right now.

24 MR. BASILE: If I can do that real quick.

25 THE COURT: If you can do that right now.

1 (Brief recess.)

2 (Jury panel present.)

3 THE COURT: Thank you. Please be seated.

4 (Voir dire proceedings had, not transcribed herein.)

5 THE COURT: Thank you. Please be seated.

6 Ms. Greenup, if you will read the names of the
7 selected jurors.

8 COURTROOM DEPUTY: As I call your name, if you would
9 please come forward.

10 Marcella J. Helmke.

11 Edward Onofre.

12 Gabriel Jasso.

13 Cynthia Carrasco.

14 Michael R. Verstuyft.

15 Dugald Winter.

16 Anna L. Counts.

17 Martha P. Nelson.

18 John R. Gidcumb.

19 Julianne Damore.

20 Joan D. Michaud.

21 Marcus Cantu.

22 James Hilton Alexandria III.

23 THE COURT: Is the government satisfied?

24 MS. WANNARKA: Yes, Your Honor.

25 THE COURT: Is the defense satisfied?

1 MR. BASILE: Yes, Your Honor.

2 THE COURT: Will you please swear in the impaneled
3 jurors.

4 COURTROOM DEPUTY: Could you please stand and raise
5 your right hand.

6 (Oath administered to the jury.)

7 COURTROOM DEPUTY: Thank you.

8 THE COURT: Thank you. Ladies and gentlemen, to
9 those of you who were not selected, my thanks to you all. You
10 did perform a valuable service that we did need you for today.
11 I thank you for appearing.

12 One of my unpleasant tasks around here is to fine
13 individuals who do not respond to jury service, and I take
14 that responsibility very seriously. So thank you here.

15 I am not sure that you are going to be needed for
16 any other juries. Or are they going to be needed for the
17 magistrate court?

18 COURTROOM DEPUTY: The magistrate court. They need
19 to go back down.

20 THE COURT: I'm sorry. You will be needed for the
21 magistrate court, so if you will go back downstairs to the
22 jury assembly area, you will get further instructions. Thank
23 you.

24 (Jury panel leaves courtroom.)

25 THE COURT: To those of you here who have now been

1 selected as the jury in this case, I want to take a few
2 minutes to tell you something about your duties as jurors. I
3 guess I ought to put your mind at ease. We are going to have
4 lunch in just a second.

5 (Laughter.)

6 THE COURT: Let me give you these preliminary
7 instructions, and then I will release you to have lunch and
8 then we will start hearing the rest of this case.

9 You are now the jury in this case. I want to take a
10 few minutes to tell you something about your duties as jurors
11 and give you some instructions. At the end of the trial, I
12 will give you more detailed instructions. You must follow all
13 of my instructions in doing your job as jurors.

14 As I mentioned before, this is a criminal case
15 brought by the government. I will sometimes refer to the
16 government as the prosecution. The defendant has been charged
17 by the government with a criminal violation of law, and I read
18 to you earlier the indictment.

19 The charge against the defendant is contained in the
20 indictment. The indictment is simply the description of the
21 charge made by the government against the defendant, but it is
22 not evidence that the defendant committed any crime.

23 The defendant pled not guilty to the charge. A
24 defendant is presumed innocent and may not be found guilty by
25 you unless all of you unanimously find that the government has

1 proved the defendant's guilt beyond a reasonable doubt.

2 The first step in this trial after lunch will be
3 opening statements. The government, in its opening statement,
4 will tell you about the evidence which it intends to put
5 before you so that you will have an idea of what the
6 government's case is going to be.

7 Just as the indictment is not evidence, neither is
8 the opening statement evidence. Its purpose is only to help
9 you understand what the evidence will be and what the
10 government will try to prove.

11 After the government's opening statement, the
12 defendant's attorney may make an opening statement. At this
13 point in trial, and during the opening statements, no evidence
14 has been offered.

15 Evidence is only coming from the witness stand and
16 from those exhibits that I admit into evidence. What the
17 lawyers say is not evidence.

18 After opening statements, the government will first
19 offer evidence that it claims will support the charges against
20 the defendant. The government's evidence may consist of the
21 testimony of witnesses as well as documents and exhibits.
22 Some of you have probably heard the term "circumstantial
23 evidence" and "direct evidence." Don't be concerned with
24 those terms. You are to consider all of the evidence I give
25 to you in this trial.

1 After the government's evidence, the defendant's
2 lawyer may present evidence in the defendant's behalf, but the
3 defendant's lawyer is not required to do so. I remind you
4 that the defendant is presumed innocent and that the
5 government must prove the guilt of the defendant beyond a
6 reasonable doubt. The defendant does not have to prove his
7 innocence.

8 If the defendant decides to present evidence, the
9 government may introduce rebuttal evidence. After you have
10 heard all of the evidence on both sides, the government and
11 the defense will be given time for final arguments.

12 I just told you that the opening statements by the
13 lawyers are not evidence. The same applies to closing
14 arguments. That is not evidence either, but you should pay
15 close attention to the closing arguments, nevertheless.

16 The final part of the trial occurs when I instruct
17 you about the rules of law which you are to use in reaching
18 your verdict. After hearing my instructions, you will leave
19 the courtroom together to make your decision. Your
20 deliberations will be secret. You will never have to explain
21 your verdict to anyone.

22 Now that I have described the trial itself, let me
23 explain the jobs that you and I are to perform during the
24 trial. I will decide which rules of law apply in this case in
25 response to questions or objections raised by the attorneys as

1 we go along, and also in the final instructions given to you
2 after the evidence and arguments are completed.

3 You must follow the law as I explain it to you,
4 whether you agree with it or not. You, and you alone,
5 however, are judges of the facts. Therefore, you should give
6 careful attention to the testimony and exhibits, because based
7 upon this evidence, you will decide whether the government has
8 proved beyond a reasonable doubt that the defendant has
9 committed the crimes charged in the indictment.

10 You must base that decision only on the evidence in
11 this case and my instructions about the law. You will have
12 the exhibits with you when you deliberate.

13 At this point, I am going to deviate from my notes a
14 little bit here. Note taking. This is going to be a
15 relatively short trial with very few witnesses. If you want
16 to take notes, you, of course, have the right to take notes,
17 and the courtroom security officer can pass you a pad and pen
18 or pencil later, if you would like to take notes.

19 My preference, however, for you, is that you all
20 don't take notes. The only reason for that is that sometimes
21 we get so involved in the note taking that we are just
22 concentrating on that pad and you are not doing what you are
23 supposed to be doing first and foremost, and that is listening
24 to the testimony from the witness stand, evaluating that
25 testimony, evaluating the credibility of the witness, and I

1 have seen some jurors just get so involved in the note taking.

2 So my preference would be for you all not to take
3 notes, but if you would like to take notes, you can ask the
4 courtroom security officer later for a notepad and one can be
5 provided to you.

6 I will provide you further instructions on note
7 taking at the end of the trial. But if you do take notes, be
8 careful. Don't get so involved in the note taking that you
9 become distracted.

10 Your notes are only to be used as a memory aid. You
11 should not give your notes precedence over your independent
12 recollection of the evidence. If you do not take notes, you
13 should rely upon your own independent recollection of the
14 proceedings and you should not be unduly influenced by the
15 notes of other jurors.

16 Notes are not entitled to any greater weight than
17 the memory or impression of each juror as to what the
18 testimony may have been. Whether you take notes or not, each
19 of you must form and express your own opinion as to the facts
20 of the case.

21 The other thing I want to talk to you about is the
22 court reporter. You notice that he is taking down everything
23 we say, and it is appearing on these computer screens in front
24 of us.

25 That sometimes gives a false impression to the

1 jurors. They think: Oh, it is okay if I miss the testimony
2 this first go-round. When we go back in the jury deliberation
3 room, I will just ask the court reporter to print out that
4 portion for me.

5 That is not the way it works. Mr. Myers does an
6 excellent job, but what he does is draft, and I can't send
7 draft to the jury deliberation room, so the court reporter's
8 transcript will not be made available to you when you
9 deliberate. So don't get the false impression that, if I miss
10 it the first go-round, I will catch it later. That is not the
11 way it happens.

12 It is going to be up to you to decide which
13 witnesses to believe, which witnesses not to believe and how
14 much of any witness's testimony to accept or reject. I will
15 give you some guidelines for determining the credibility of
16 witnesses at the end of this case.

17 Now, I indicated to you earlier that the defendant
18 was charged with two crimes. I will give you detailed
19 instructions on the law at the end of this case and those
20 instructions will control your deliberations and your
21 decision, but in order to help you follow the evidence, I am
22 going to give you a brief summary of the elements of the
23 offense which the government must prove to make its case.

24 With regard to the charge contained in Count 1,
25 sexual exploitation of a child, the government must prove

1 three elements. One, that the defendant knowingly employed,
2 used, persuaded, induced or coerced a minor to engage in
3 sexually explicit conduct. Two, that the defendant did so
4 with the purpose of producing a visual depiction of such
5 conduct. And, three, that the visual depiction was produced
6 using materials that had been mailed, shipped or transported
7 in interstate or foreign commerce, including by computer.

8 As to the charge contained in Count 2, possession of
9 child pornography, the government must prove three elements.
10 One, that the defendant knowingly possessed material that
11 contained at least one visual depiction of child pornography.
12 Two, that the defendant knew that the visual depiction or
13 depictions were of a minor engaging in sexually explicit
14 conduct. And, three, that the visual depictions were produced
15 using materials that had been mailed, shipped or transported
16 in interstate or foreign commerce, including by computer.

17 During the course of this trial, don't talk with any
18 of the witnesses or with the defendant or with any of the
19 lawyers. I am going to ask you to always wear your juror
20 button while you are around the courthouse. That will let
21 everybody here know who you are and to maintain a respectful
22 distance from you all.

23 You all have sworn to be fair and impartial jurors
24 in this case, and we want to ensure that there is not even an
25 appearance of impropriety.

1 And what do I mean by that? You know, if, by
2 chance, you were talking to one side or the other, even about
3 something as innocent as the weather, put yourself in the
4 mindset of the other side. They probably are wondering, What
5 are they talking about? What are they saying? What are they
6 doing?

7 You know, we are trying to avoid even these kind of
8 appearances that something is not right. So I am going to ask
9 you to maintain your respectful distance from the lawyers.
10 They understand that.

11 If, by chance, you happen to come across one of them
12 in the rotunda or something like that, a respectful nod of a
13 hello is fine, but nothing more than that.

14 Again, be careful about witnesses that might be out
15 there during breaks. This building is a windowless, circular
16 building, so I am not going to put you in this little
17 deliberation room and lock you in there during breaks. I am
18 going to let you out when we take our breaks, from time to
19 time.

20 That poses certain problems, however. You need to
21 be careful about who you are around, who you might overhear
22 saying things and who might try to approach you.

23 When we are out on these breaks, hang around a
24 fellow juror, but don't start talking even innocently with
25 somebody else, because it could very well be a witness that

1 you don't even realize is a witness in this case, so don't
2 talk with anybody about this case.

3 Don't talk about this case with your family, your
4 friends, your coworkers. At the end of the day or when you
5 take breaks and make phone calls, you can say, "Yes, I have
6 been chosen for a criminal case in federal court. It is going
7 to last two, three, four days," but don't say anything else.

8 I would not even say what kind of case it is,
9 because all of a sudden, when you make a comment, the other
10 person that you are talking to is going to start making
11 comments, and we don't know what they are going to say that
12 may influence your decision abilities here.

13 Again, all of the evidence comes from the witness
14 stand and the exhibits that I introduce. You can't receive
15 evidence from any other source. If you do, it could cause a
16 mistrial.

17 The Internet. Just a couple of months ago, I was
18 giving these exact instructions to the jurors, and this one
19 juror disregards my instructions, goes on to the Internet --
20 and this was a case where I had previously suppressed a
21 confession that the defendant made, and it was all over the
22 newspaper, and he disregarded my instructions, went on the
23 Internet, found that defendant's name, found out about the
24 suppression of the confession, and then he proceeded to tell
25 other jurors, another juror about what he found in the paper.

1 And that other juror did the right thing. He came up and told
2 me: Hey, this is what juror one did.

3 And, thankfully, I had a couple of alternate jurors
4 in there and we were able to continue the case, but just
5 barely. If you engage in any outside research of any kind, it
6 could cause a mistrial on this case, and all of the resources,
7 time and energy that we have all collectively put in this case
8 could be at risk.

9 One thing great about being a juror is there is
10 absolutely no homework. Nobody -- and I instruct you and I
11 order you, do not to engage in any Internet research. Don't
12 type in any phrases, names or anything else that you have
13 heard in this case. Don't go into any web sites that may be
14 talking about these kind of issues.

15 For the next several days -- and I do see an
16 Express-News reporter here. For the next several days, you
17 are ordered not to read the Metro section of the newspaper.
18 If -- and the first section of the newspaper, you can read the
19 international news, but if you happen to run across an article
20 related to this case or any other kind of cases similar to
21 that, you are instructed to blow past that article and not
22 even glance at that.

23 Is everybody clear on my instructions to you all?

24 JURORS: Yes, sir.

25 THE COURT: Okay. Technology is now such a problem

1 that I feel almost compelled to overemphasize this point.
2 Don't tweeter or tweet, Google, blog, anything like that about
3 this case. Don't put on your Facebook -- we have actually had
4 jurors in other courts put on their Facebook that they are a
5 juror in this type of case and then start talking about the
6 case on their Facebook site. Don't do anything like that
7 regarding this case.

8 Does everybody understand my instructions?

9 JURORS: Yes, sir.

10 THE COURT: Okay. At times during the trial, a
11 lawyer may make an objection to questions asked by another
12 lawyer or to an answer by a witness. This simply means that
13 the lawyers are requesting that I make a decision on a
14 particular rule of law.

15 Don't draw any conclusion from such objections or
16 from my rulings on the objections. These relate only to legal
17 questions that I must determine and should not influence your
18 thinking.

19 If I sustain an objection to a question, the witness
20 may not answer it. Don't attempt to guess what the answer
21 might have been had I allowed the question to be answered.
22 Similarly, if I tell you not to consider a particular
23 statement, you should put that statement out of your mind and
24 you may not refer to that statement in your later
25 deliberations.

1 If an objection is overruled, treat the answer like
2 any other. During the course of the trial, I may ask a
3 question of a witness. If I do, that does not indicate that I
4 have any opinion about the facts in this case.

5 Nothing I say or do should lead you to believe that
6 I have any opinion about the facts nor be taken as indicating
7 what your verdict should be.

8 During the trial, I may have to interrupt the
9 proceedings to confer with the attorneys about the rules of
10 law which should apply here. Sometimes we will talk here at
11 the bench.

12 If it goes on a little longer, I may excuse you. We
13 will try to keep these interruptions as short as possible, but
14 bear in mind that your patience sometimes is necessary.

15 Finally, there are three basic rules about a
16 criminal case which you should keep in mind. First, the
17 defendant is presumed innocent until proven guilty. The
18 indictment against the defendant brought by the government is
19 only an accusation, nothing more. It is not proof of guilt or
20 anything else. The defendant, therefore, starts out with a
21 clean slate.

22 Second, the burden of proof is on the government
23 until the very end of the case. The defendant has no burden
24 to prove his innocence or to present any evidence or to
25 testify.

1 Since the defendant has the right to remain silent,
2 the law prohibits you from arriving at your verdict from
3 considering that the defendant may not have testified.

4 Third, the government must prove the defendant's
5 guilt beyond a reasonable doubt. And I will give you further
6 instructions on this point later, but bear in mind that in
7 this respect, a criminal case is very different from a civil
8 case.

9 Ladies and gentlemen, at this point, I am going to
10 stop. We are well into the lunch hour now, and I know some of
11 you have been around since early this morning. So I am going
12 to send you back to the deliberation room.

13 The courtroom security officer will get you
14 acquainted with that room, give you an idea of what around
15 here may be available for you to grab a bite at. In the next
16 day or two, if you want to bring your own lunch, you are
17 welcome to do that as well. The courtroom security officer
18 will be able to provide you all of those kind of instructions.

19 Get to know each other, workplace, those kind of
20 social chats, but do not talk about this case. Don't talk
21 about the allegations in this case. Don't talk about the
22 defendant, the government lawyers, the defense lawyer, or my
23 performance.

24 At this point, keep an open mind. You haven't heard
25 any evidence and you need to hear all of the evidence in the

1 case before I allow you to start deliberating. We will return
2 at 1:30. If you can get back like five minutes early, so we
3 can all start on time. If one of us is late, we are all late,
4 so I will try to always tell you an exact time to come back
5 at.

6 Any questions about my instructions? Thank you,
7 ladies and gentlemen. We will see you back at 1:30.

8 (Jury leaves courtroom.)

9 THE COURT: Anything we need to take up?

10 MR. BASILE: No, Your Honor.

11 THE COURT: See you at 1:30.

12 (Lunch recess.)

13 THE COURT: Please be seated.

14 Ladies and gentlemen, we will now turn to opening
15 arguments. Again, I remind you, what the lawyers say is not
16 evidence.

17 And with that, I recognize the government.

18 MS. WANNARKA: Thank you, Your Honor.

19 May it please the Court, defense counsel. Good
20 afternoon, ladies and gentlemen. You have heard what the
21 defendant is charged with in this case, production and
22 possession of child pornography.

23 To give you an idea of what I anticipate the
24 evidence is going to show, I will start with talking about
25 adoption. Adoption is a beautiful thing. It is a chance for

1 a child to have a new life, to have hope, to have a fresh
2 start, a new beginning, to essentially dream about a family,
3 parents to love them, care for them, and provide them the new
4 life that they have dreamt of, that children all over the
5 world dream of.

6 But for the victim in this case, Amanda Mouton, that
7 dream became a nightmare. What I anticipate the evidence to
8 show is that the defendant in this case Steven Mouton, and his
9 wife, Margaret, adopted a child from China, two years old,
10 brought her to the United States for her fresh start, for her
11 dream of a family, for parents that love her.

12 They put a roof over her head. They clothed her.
13 They fed her. They took her to school. They put her in music
14 lessons. They encouraged extracurricular activities.

15 But what I also believe the evidence will show is
16 that beginning at that young age and continuing to the age of
17 twelve, the defendant, Steven Mouton, took pictures of her in
18 various forms of dress, to include completely nude, in sexual
19 positions, when she was asleep and when she was awake.

20 I also believe that the evidence will show that he
21 began to penetrate her, asleep and awake, with his penis, with
22 his fingers and, curiously enough, with a cigar holder. I am
23 sad to say that the evidence will show all of that in the form
24 of pictures in this case.

25 The only thing that could be possibly worse than the

1 sexual assault of a child is someone taking pictures of it, of
2 capturing the physical and the emotional pain of the
3 devastating humiliation, of essentially the worst, worst times
4 of their lives, to capture that with photography for that
5 person's own sexual gratification.

6 The evidence will show that that is what Steven
7 Mouton did. He additionally possessed other images of other
8 kids, someone else's kids in sexual positions, various forms
9 of dress and penetration, and various ages, beginning with
10 infant up until young, ten, eleven, twelve years old.

11 The evidence will show overwhelmingly that the
12 defendant essentially ordered up his victim. The defendant is
13 charged with the production and the possession of child
14 pornography, and that is what the government will prove to you
15 beyond a reasonable doubt, and at the end of the trial, we
16 will ask you to find him guilty. Thank you.

17 THE COURT: Mr. Basile.

18 MR. BASILE: I think I will reserve any opening for
19 after the evidence.

20 THE COURT: Noted.

21 With that, we turn to the evidence in the case, and
22 your first witness.

23 MS. BRAUN: Your Honor, the government calls David
24 Gonzales.

25 THE COURT: Oh. Before that, does anybody invoke

1 the rule?

2 MR. BASILE: Your Honor, I was going to invoke the
3 rule.

4 THE COURT: The rule has been invoked. Are there
5 any witnesses in the courtroom? All witnesses will need to
6 step outside and remain outside. Don't speak with each other
7 about this case. You can speak to the lawyers, and we will
8 call you in when necessary.

9 MS. WANNARKA: Your Honor, one of our forensic
10 special agents, Charlie Cox, for the FBI is in the courtroom.
11 We would ask that he be able to remain in the courtroom as an
12 expert witness. We have already discussed that with defense
13 counsel, and he has agreed to that.

14 THE COURT: Any objection to that?

15 MR. BASILE: No objection, Your Honor, since he is
16 an expert witness.

17 THE COURT: That will be fine, then.

18 MS. WANNARKA: And then, of course, in addition, our
19 case agent.

20 THE COURT: And the case agent is excused from the
21 rule.

22 COURTROOM DEPUTY: Please raise your right hand.

23 (Oath administered to the witness.)

24 COURTROOM DEPUTY: Thank you.

25 THE COURT: Please take a seat.

GONZALES - DIRECT

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DIRECT EXAMINATION

BY MS. BRAUN:

Q. Please state and spell your name for the record.

A. David Gonzales. D-a-v-i-d G-o-n-z-a-l-e-s.

Q. What is your occupation?

A. I am a community supervision officer for the 216th
Judicial District in Kendall County, Texas.

Q. How long have you had that occupation?

A. In Kendall County, I have been an officer for two years,
and overall, I have been an officer for ten years.Q. Other than Kendall County, where have you been a
corrections officer?A. I have been working -- I worked for Medina County and Kerr
County as well.Q. Are you familiar with the defendant in this case, Steven
Mouton?

A. Yes, ma'am.

Q. In October of 2007, was Mr. Mouton on probation in Kendall
County?

A. Yes, ma'am. Correct.

Q. Were there certain rules or conditions that he was ordered
to abide by?

A. Yes.

Q. As a probation officer, do you have the authority to check

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1 up on individuals who were on probation?

2 A. Yes, ma'am.

3 Q. Does that include visiting their homes?

4 A. Yes.

5 Q. Did you conduct a home visit of the defendant on October
6 18th of 2007?

7 A. Yes, ma'am. Sure did.

8 Q. Where was he living at that time?

9 A. I can't remember the name of the street, but it was in
10 Boerne, Boerne, Texas.

11 Q. Was it 18 Crystal Circle in Boerne, Texas?

12 A. Yes. Correct.

13 Q. When you conduct a home visit, do you go in teams?

14 A. Yes.

15 Q. Why is that?

16 A. For safety reasons.

17 Q. Who went with you on October 18th to the defendant's home?

18 A. Officer Brooke Davis.

19 Q. Is she also a community supervision officer?

20 A. Yes, ma'am.

21 Q. Anybody else accompany you?

22 A. Investigator Kendall Gebauer from the Kendall County
23 Sheriff's Office.

24 Q. What time did you arrive at the defendant's house?

25 A. Approximately about, I would say, around 2:30, 3:00

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1 o'clock in the afternoon some time.

2 Q. Who else was living at the home at that time?

3 A. From my understanding, it was Mr. -- the defendant's wife
4 and the defendant's daughter.

5 Q. Do you know how old the daughter was?

6 A. I know she was under the age of 17, but I am not sure on
7 the exact date. Maybe twelve years old, I believe.

8 Q. Okay. When you arrived at the house, was there anybody
9 home?

10 A. The defendant, Mr. Mouton.

11 Q. Did he answer the door?

12 A. Yes, ma'am.

13 Q. What happened when he answered the door?

14 A. He was very surprised to see Officer Davis and I and the
15 investigator were at his house.

16 Q. Was anybody else home other than the defendant?

17 A. No, ma'am.

18 Q. Did you tell Mr. Mouton why you were at his house?

19 A. Yes, ma'am.

20 Q. What did you tell him?

21 A. We just explained to him it was just a routine field
22 visit. We just want to make sure that -- or confirm that was
23 his actual address and make sure that there weren't any
24 problems.

25 Q. Did you enter the home?

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1 A. Yes, ma'am.

2 Q. What happened after you got inside?

3 A. Well, he just -- he gave us a tour. He voluntarily
4 decided, hey, you know, look around. We asked him if we could
5 look around.

6 He said: Sure. No problem.

7 And at that time, we kind of -- you know, we kind of
8 make sure that everything is okay. We entered the home. The
9 first thing we noticed was in the refrigerator him having some
10 alcoholic beverages.

11 Q. Is the house one story or two stories.

12 A. Two stories.

13 Q. What rooms are on the second story of the house?

14 A. There was a music room, and that's where we located the
15 laptop. And Amanda's room, the defendant's daughter.

16 Q. Are those the only two rooms on the second level?

17 A. Yes, ma'am.

18 Q. Did you go into every room in the house?

19 A. Yes, ma'am.

20 Q. You mentioned you located the computer. Were you looking
21 for computers?

22 A. If the defendant has a computer, we try to make sure that
23 there isn't anything illegal happening on those computers, and
24 we ask the defendants if they have any problem if we can
25 search their computers.

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1 Q. And you found a laptop computer in the music room; is that
2 correct?

3 A. That is correct.

4 Q. Was there also a desktop computer in the music room?

5 A. Yes, ma'am.

6 Q. When you noticed the computers in that room, what, if
7 anything, did you say to the defendant?

8 A. We just asked him if it was okay if we could search the
9 computers, if he had any problems with that, and he
10 voluntarily said that was fine.

11 Q. Did he tell you whose -- who used either or both of the
12 computers?

13 A. Yes, ma'am.

14 Q. What did he say?

15 A. He said that he uses the computers as well as his wife,
16 once in a while, but mostly, it was him. It was his computer.

17 Q. Who checked the computer -- well, did you check both
18 computers?

19 A. Just the laptop.

20 Q. Who checked the laptop?

21 A. I did.

22 Q. And what happened when you checked it?

23 A. Well, I just kept going through the files and making sure,
24 like I said, there wasn't anything illegal, and I came across
25 an image or a picture of a birthday party. Amanda was having

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1 a birthday party and there were several minor individuals
2 there, minor female individuals.

3 Q. Did you ask the defendant about that picture?

4 A. Yes, ma'am.

5 Q. What did he say about it?

6 A. He acknowledged that he took the pictures, which posed a
7 red flag for me, because he was under -- he understands that
8 one of the conditions --

9 MR. BASILE: Your Honor, nonresponsive. A question
10 wasn't asked of him.

11 THE COURT: Yes. You need to wait for a question.

12 THE WITNESS: Okay. Yes, sir.

13 THE COURT: Sustained.

14 BY MS. BRAUN:

15 Q. After Mr. Mouton admitted taking the birthday party
16 pictures, did you continue looking at the laptop or did that
17 end your search?

18 A. No. I continued looking.

19 Q. What else did you find?

20 A. I also located another image, which was of Amanda.

21 Q. And in this other image that you located, was it of a
22 certain body part of Amanda?

23 A. Yes.

24 Q. What was it of?

25 A. The vagina.

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1 Q. What happened when you found that picture on the computer?

2 A. Well, I asked -- I asked the defendant who this picture
3 was, of whom, and that's where he kind of hesitated and then
4 acknowledged that it may have been Amanda.

5 Q. Do you remember what exactly he told you?

6 A. Initially, he said: I have no idea. It could be Amanda.
7 And then I kept asking him: Who is this? Steve, you know who
8 this is. And then he eventually he admitted that it was -- it
9 could have been Amanda.

10 Q. Did you ask him how a picture of Amanda's vagina would end
11 up on his computer?

12 A. Yes.

13 Q. What did he say?

14 A. He said it could have -- she had a slumber party and
15 Amanda could have taken it on her own.

16 Q. What did you do with that image of Amanda's private part
17 that you found on the computer?

18 A. I showed it to the defendant and I went ahead and printed
19 it out.

20 MS. BRAUN: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MS. BRAUN:

23 Q. I will show you what has been marked for identification as
24 Government's Exhibit 1. Do you recognize that?

25 A. Yes, ma'am.

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1 Q. What is it?

2 A. That is the image that I located on his computer.

3 Q. And is this the image that you printed out?

4 A. Yes, ma'am.

5 Q. Is it in the same or substantially the same condition now
6 as when you found it and printed it on October 18th of 2007?

7 A. Yes, ma'am.

8 MS. BRAUN: The government offers Exhibit 1.

9 MR. BASILE: Your Honor, I don't think the proper
10 predicate has been laid on this photograph, so I will object
11 on those grounds.

12 THE COURT: What is the missing predicate?

13 MR. BASILE: I don't think they asked whether there
14 have been any alterations made to the picture, anything is
15 different in this photograph than there was at the time.

16 THE COURT: No. That was laid. Any other
17 objection?

18 MR. BASILE: No other objection, Your Honor.

19 THE COURT: Number 1 is admitted.

20 MS. BRAUN: Your Honor, I would ask permission to
21 publish Exhibit 1 to the jury.

22 THE COURT: Yes.

23 COURTROOM SECURITY OFFICER: Lights out?

24 THE COURT: No.

25 COURTROOM SECURITY OFFICER: No.

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1 BY MS. BRAUN:

2 Q. After you showed Exhibit 1 to the defendant, what further
3 conversation was there about that image?

4 A. As I recall, he continued to deny saying that it could
5 have been Amanda -- you know, when she had her slumber party.
6 And I continued to ask him: Steve, you know, you have to be
7 honest with us. I mean, this is illegal to have on your
8 computer, and you understand that.

9 And he said: Well -- and that's when he started
10 getting nervous and jittery to a point where he starts
11 stuttering.

12 Q. When you were at the house on October 18th, did he call
13 his wife?

14 A. Yes.

15 Q. What did he say to her?

16 A. He just told her that we were there. The probation
17 department was there, and that we had located an image of
18 Amanda.

19 Q. Did he ask her to come to the house?

20 A. Yes.

21 Q. And did she eventually arrive at the house?

22 A. Yes.

23 Q. Did you have a conversation with her?

24 A. No.

25 Q. After you found that image on the computer, what happened

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1 to the two computers that were there that day, the laptop and
2 the desktop? Did you take those with you?

3 A. No. The sheriff's department did, Kendall County
4 Sheriff's Department.

5 Q. Did you have any further conversation with Mr. Mouton?

6 A. No.

7 Q. Was he left at the house that day with his wife?

8 A. Yes.

9 Q. Did you have any further involvement in this case?

10 A. No.

11 MS. BRAUN: Thank you. Nothing further.

12 THE COURT: Any questions?

13 MR. BASILE: Just a couple, Your Honor.

14 *-*-*-*-*-*-*

15 CROSS EXAMINATION

16 BY MR. BASILE:

17 Q. Mr. Gonzales, how are you today?

18 A. Just fine. How are you, sir?

19 Q. You said that you noticed first an image of some girls at
20 a birthday party; is that right?

21 A. Yes, sir.

22 Q. There was nothing wrong with those images, were there?

23 A. Yes, sir.

24 Q. What is wrong with those images at the birthday party?

25 A. Well, Mr. Mouton, the defendant, was aware that as a

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1 condition of probation, he is not to have any contact with a
2 minor, directly or indirectly.

3 Q. And then this particular photograph -- those pictures were
4 just people at a birthday party? There was nothing sexual
5 about it, was there?

6 A. No.

7 Q. Okay. And this picture that you located on this -- how
8 did you find them?

9 A. Just searching through the files.

10 Q. Just going through the files and opening up all kinds of
11 files?

12 A. Yes, sir.

13 Q. Was it just randomly placed somewhere?

14 A. Yes, sir.

15 Q. There wasn't any type of a name or group or anything, was
16 there?

17 A. Yes, but I can't recall the name of the actual file.

18 Q. And you are not here today to testify that you know that
19 it actually is Amanda, are you?

20 A. No.

21 Q. You have no idea who that -- who that is, do you?

22 A. Only according to what the defendant said.

23 Q. Okay. And you have no idea how that picture got on the
24 computer, do you?

25 A. No.

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1 Q. And you have no idea who actually took that photograph, do
2 you?

3 A. According to the defendant, he said, admitted that it was
4 his.

5 Q. No. That's not what you said a few minutes ago.

6 A. According to the defendant.

7 Q. When did that -- when did you change your story?

8 A. Excuse me?

9 Q. When did you change your story? When you were asked
10 questions by the government, you said he denied it.

11 A. Initially, he denied it.

12 Q. And you said he continued to deny it?

13 A. Yes.

14 Q. Again, and he got nervous and continued to deny it, didn't
15 he?

16 A. Until afterwards, he finally admitted that it could have
17 been Amanda.

18 Q. It could have been?

19 A. Yes.

20 Q. But then you don't know, do you?

21 A. No.

22 MR. BASILE: I have no further questions, Your
23 Honor.

24 THE COURT: Anything based on those?

25 MS. BRAUN: No, Your Honor.

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1 THE COURT: You may step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Your next witness.

4 MS. BRAUN: Government calls Kendall Gebauer.

5 COURTROOM DEPUTY: Would you please raise your right
6 hand.

7 (Oath administered to the witness.)

8 COURTROOM DEPUTY: Thank you.

9 *-*-*-*-*-*-*

10 DIRECT EXAMINATION

11 BY MS. WANNARKA:

12 Q. Please state your name for the jury.

13 A. Kendall Gebauer.

14 Q. How are you currently employed?

15 A. I am with the Kendall County Sheriff's Office. I am an
16 investigator.

17 Q. What are your duties with the Kendall County Sheriff's
18 Department?

19 A. Right now, I am assigned to the Drug Enforcement
20 Administration as a narcotics investigator.

21 Q. So do you also have federal law enforcement credentials?

22 A. Yes, I do.

23 Q. Prior to your service with Kendall County, how were you
24 previously employed?

25 A. The Pasadena, Texas Police Department.

GEBAUER - DIRECT

1 Q. And how long were you with Pasadena?

2 A. Twenty-six years.

3 Q. When you were in Pasadena, were you also a member of the
4 DEA Task Force?

5 A. Yes, I was.

6 Q. I would like to draw your attention back to October 18,
7 2007.

8 A. Yes.

9 Q. Had you just started work with Kendall County?

10 A. I believe that was my third week. I started on the 1st.

11 Q. And did you have the occasion to accompany David Gonzales
12 to the home of Steven Mouton?

13 A. Yes, I did.

14 Q. Okay. And when you arrived at the Mouton's home, describe
15 the defendant's demeanor when you all arrived.

16 A. When we first arrived, he appeared kind of standoffish and
17 nervous. He just seemed surprised and nervous, I guess I
18 would call it.

19 Q. Were you present when Probation Officer David Gonzales
20 searched and looked at the defendant's computers?

21 A. Yes, I was.

22 Q. And were you there when he found the picture of Amanda?

23 A. Yes.

24 Q. And that has been previously admitted as Government's
25 Exhibit 1.

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1 MS. WANNARKA: But for identification purposes, and
2 without showing the picture again, Your Honor, may I approach
3 the witness?

4 THE COURT: Yes.

5 BY MS. WANNARKA:

6 Q. Did you take custody of this picture from David Gonzales
7 after he printed it out?

8 A. Yes, I did.

9 Q. And how were you able to tell that?

10 A. I initialed it, and with the case number and the date and
11 my name.

12 Q. Okay. Thank you. And am going to head back to the
13 podium. If you will move these computers up here, please.

14 After Government's Exhibit 1 was discovered and
15 printed out, do you recall what the defendant said about that
16 picture and how it could possibly have arrived on his
17 computer?

18 A. He was --

19 MR. BASILE: Your Honor, I am going to object to him
20 answering the question as a law enforcement officer. There
21 has been no mention of any reading of the rights to Mr.
22 Mouton, so any statement he would make would be inadmissible.

23 THE COURT: Come on up.

24 (Bench conference, as follows:)

25 MS. WANNARKA: He wasn't in custody, Your Honor.

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1 That is the law when he is not in custody.

2 THE COURT: Yes. There is another problem too, is
3 that you are opening the door to the probation. I mean, it is
4 a term and condition of his probation. Didn't he give access
5 and then law enforcement and the probation office had access
6 and a right to his computer?

7 MS. WANNARKA: Yes.

8 MS. BRAUN: Yes.

9 THE COURT: Yes. That is the more serious problem
10 he had. That is why I brought you to the bench, because I
11 didn't want to start opening up why he is on probation.

12 MS. WANNARKA: No. I will move on.

13 THE COURT: What question are you going to ask?

14 MS. WANNARKA: I was going to ask him what he said
15 about the vagina picture, just that he tried to deny it and --

16 MS. BRAUN: And corroborates Stephen Gonzales's
17 testimony.

18 MS. WANNARKA: I am not asking about the slumber
19 party pictures, which the door kind of has been opened anyway,
20 but --

21 THE COURT: To rule on the objection, the objection
22 is overruled.

23 (End of bench conference.)

24 BY MS. WANNARKA:

25 Q. Investigator, restricting your comments to Government's

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1 Exhibit 1, the image of the vagina, what did the defendant say
2 when he was confronted about that particular image?

3 A. That his daughter Amanda had probably taken the picture at
4 one of her sleepovers or a slumber party and that he hadn't
5 seen it before.

6 Q. I want to draw your attention to what has been marked as
7 Government's Exhibits 2 and 4. I believe they are in front of
8 you.

9 A. Yes.

10 Q. And I will ask you to take a look at those for a moment
11 and then tell me if you can identify them.

12 A. Yes, I can.

13 Q. And how can you identify them? Please refer to the
14 exhibit --

15 A. The laptop computer was the one that I took from the
16 residence, and it is marked on the back with my initials and
17 the Kendall County case number. And the desktop is also
18 marked on the back the same way.

19 Q. And the laptop is Government's Exhibit 2?

20 A. Yes, it is.

21 Q. And the desktop is Government's Exhibit 4?

22 A. I don't see the sticker --

23 Q. Possibly on the top --

24 A. Okay. Yes, it is.

25 Q. And when you took custody of those two computers, what did

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1 you do with them? Did you take them back to secure evidence?

2 A. Yes. I returned with them to the Kendall County Sheriff's
3 Office and entered them into our property vault.

4 Q. And did you later seek search warrants for both of those
5 computers for the forensic analysis?

6 A. Yes, I did.

7 Q. At some point, did you contact CPS?

8 A. Yes, I did. I contacted CPS that day.

9 Q. Okay. And that was -- was that with regard to
10 Government's Exhibit 1?

11 A. Yes.

12 Q. The picture?

13 A. Yes, it was.

14 MS. WANNARKA: Your Honor, the government offers
15 Government's Exhibits 2 and 4, 2 and 4 into evidence.

16 THE COURT: Any objection?

17 MR. BASILE: No objection, Your Honor.

18 THE COURT: 2 and 4 are admitted.

19 BY MS. WANNARKA:

20 Q. At some point, did you request forensic assistance?

21 A. Yes, I did.

22 Q. And, essentially, you need -- did you need someone to look
23 at those computers?

24 A. Right. Somebody with the computer expertise to retrieve
25 the evidence that is on the computers, photo images or any

GEBAUER - DIRECT

1 other type of items.

2 Q. Okay. And who did you contact?

3 A. Well, I contacted probably ten or fifteen different --

4 Q. Who did you work with with regard to the forensic
5 analysis?

6 A. The San Antonio Police Department's computer forensic
7 unit.

8 Q. Okay. And when it was time to deliver the computers to
9 the San Antonio Police Department, who did that?

10 A. I did.

11 Q. Tell the jury about that.

12 A. I checked the two computers out of our property vault, and
13 I had already obtained a search warrant that was signed by a
14 judge, and then I transported them to the San Antonio PD's
15 computer forensic unit, which is their technical unit.

16 Q. And did you work specifically with a particular forensic
17 examiner?

18 A. I turned the computers directly over to Detective Stark,
19 and he is the one that did the examination of the computers.

20 Q. Okay. And did you receive a forensic report back from
21 Detective Stark?

22 A. Yes. In April of the next year, I met with Lieutenant
23 Stark. I received the computer reports of the evidence he
24 found, and I also retrieved the two computers then and took
25 them back to Kendall County, and I entered them into evidence.

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1 Q. Okay. Did you have the occasion, then, to review the
2 forensic report?

3 A. Yes, I did.

4 Q. What was your conclusion -- in other words, what did you
5 decide to do next?

6 A. Well, once looking at all of the pictures that were on
7 the -- recovered from the computers, and a majority were the
8 victim that I knew was Amanda Mouton, and -- but there were
9 hundreds of other -- I would call them victims that had their
10 pictures on the computer.

11 I had no way to identify them, and so I contacted
12 the FBI for their assistance, that they had a unit that just
13 works these type of cases.

14 Q. And is that how you have come to work on this case with
15 Special Agent Larry Baker?

16 A. Yes, it is.

17 MS. WANNARKA: Thank you. I will pass the witness.

18 THE COURT: Any questions?

19 MR. BASILE: Just a few, Your Honor.

20 *-*-*-*-*-*-*

21 CROSS EXAMINATION

22 BY MR. BASILE:

23 Q. Is it Detective or --

24 A. Detective, Investigator, or --

25 Q. Okay. And it's Gebauer, correct?

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1 A. Gebauer.

2 Q. Gebauer. Sorry. All right. So you -- the information
3 that you received on the computer was prepared by someone
4 else; is that right? The photographs?

5 A. The evidence recovered from the computer was prepared,
6 yes.

7 Q. Okay. So you are not here to testify about any
8 expertise -- any expertise in computers and getting anything
9 off of them, are you?

10 A. No.

11 Q. All right. And before this time happened, before -- had
12 you met Amanda?

13 A. Before, before October --

14 Q. October --

15 A. October eight --

16 Q. -- 2007?

17 A. No.

18 Q. When is the first time you actually met Amanda?

19 A. The 19th.

20 Q. The next day?

21 A. (Witness nods head.)

22 Q. At that time, you didn't have any of the information you
23 just testified about from the photographs, did you?

24 A. The only picture I had seen from the computer that was
25 recovered was the one of the paper printout, and then I had

GEBAUER - CROSS

1 seen the pictures on the computer as Mr. Gonzales was going
2 through the computer.

3 Q. And that's the other pictures you testified about, right?
4 Pictures of birthday parties and things like that?

5 A. I haven't mentioned that, but, yes. It was a slumber
6 party or birthday party.

7 MR. BASILE: I have no further questions, Your
8 Honor.

9 THE COURT: Anything further?

10 MS. WANNARKA: Nothing further.

11 THE COURT: You may step down. Thank you, sir.

12 MS. WANNARKA: Next witness is Mike Stark, Detective
13 Mike Stark.

14 THE COURT: Do you want this still up there?

15 MS. WANNARKA: Yes.

16 COURTROOM SECURITY OFFICER: Can't see the
17 witnesses --

18 THE COURT: It is blocking the witness's view of
19 the -- or the juror's view of the witness, rather.

20 COURTROOM DEPUTY: Could you please raise your right
21 hand.

22 (Oath administered to the witness.)

23 COURTROOM DEPUTY: Thank you.

24 *-*-*-*-*-*-*-*
25

STARK - DIRECT

DIRECT EXAMINATION

BY MS. WANNARKA:

Q. Detective, please tell the jury your name.

A. Michael Stark.

Q. How are you currently employed?

A. I am employed by the City of San Antonio Police Department.

Q. What are your duties?

A. I am a detective investigator in computer crimes.

Q. Have you received training and do you conduct computer examinations?

A. Yes, ma'am.

Q. Tell the jury about your training and your experience in that regard.

A. I started in May of 2000. I have done several hundred hours of computer training at the Federal Law Enforcement Academy, just a little training all over the country, but I do have several hundred hours of training in computer forensics.

Q. Are you certified with EnCase software?

A. Yes.

Q. And is that a software that is recognized in the forensic community as reliable and commonly used to analyze computers and digital media?

A. Yes.

Q. Tell the jury basically what computer forensics is.

STARK - DIRECT

1 A. Computer forensics is the examination of digital media
2 without changing anything on that media. Basically, you
3 just -- you do it in a sterile environment. As far as
4 sterile, I don't mean like a doctor's office, but it is an
5 environment that keeps anything from writing to that drive.
6 You don't want to contaminate that drive at all, so we use
7 special software and hardware to keep from doing that.

8 Q. And building on that, what is the procedure with examining
9 a hard drive from a computer?

10 A. Normally, we will take the hard drive out of the computer
11 and we will put it in our computer, which is a forensic
12 computer that has the hardware that I just explained, and we
13 will make a copy of this -- of the evidence drive, and we will
14 take that and we will make -- like I say, we will make a copy
15 of it, and then we will take the original and we will put it
16 back in our evidence or back into the computer, and we will
17 use the copy as something that we use to retrieve evidence off
18 of. We never -- we don't use the original after we make the
19 copy.

20 Q. And how are you able to verify or confirm that your copy
21 or mirror image is a true and accurate copy of the original
22 piece of evidence?

23 A. We use two different methods. We use what is called an
24 MD5 hash, which is a mathematical algorithm, mathematical --
25 it is like a check sum. We use them -- we compare the

STARK - DIRECT

1 original and then we compare our copy, and as long as those
2 two match with the MD5 hash, then it is like a DNA
3 fingerprint. It's -- and then we also use what is called a
4 CRC, a cyclical redundancy check sum on each block of
5 information that we retrieve off of the hard drive.

6 Q. When you analyzed Government's Exhibits 4 and 2, did you
7 use that procedure?

8 A. Yes.

9 Q. And when you mirrored both of those hard drives, did you
10 verify that the mirror image that you tested was a true and
11 exact copy of the original evidence?

12 A. Yes, I did.

13 Q. I would like to draw your attention first to Government's
14 Exhibit 2, which is the laptop there in front of you. What is
15 the brand name of that laptop?

16 A. It is an Acer.

17 Q. Okay. And with regard to the hard drive that you tested,
18 where is the hard drive manufactured?

19 A. It is manufactured in Thailand.

20 Q. Okay. And then drawing your attention to Government's
21 Exhibit 4, which is the desktop, I believe, on the floor, the
22 computer system there, when you analyzed that hard drive,
23 where did you discover that it was manufactured?

24 A. It was manufactured in Malaysia.

25 Q. I would like to move on to the results of your forensic

STARK - DIRECT

1 analysis. Beginning first with Government's Exhibit 4, the
2 desktop that is there on the floor. When you looked at this
3 computer, other than -- well, how were you able to link that
4 particular computer to this defendant?

5 MR. BASILE: Your Honor, I am going to object to any
6 testimony about "link." I don't think he has been qualified.
7 He just mentioned briefly his background, some classes. He
8 didn't go into detail to show he is an expert.

9 THE COURT: He hasn't been tendered as an expert
10 yet.

11 MS. WANNARKA: Your Honor, I believe that we have
12 established enough to -- that he is qualified as an expert
13 with regard to his education and his time of analyzing
14 computers, and we would tender him as an expert.

15 THE COURT: Any opposition to the tender?

16 MR. BASILE: Yes, Your Honor. I don't think his
17 testimony that he has taken lots of classes since 2000 is
18 sufficient. He hasn't given us information of what classes
19 and how they relate, what he is doing, and how they would help
20 him in doing what he has been asked to do by the government.

21 THE COURT: That is sustained. You need to work
22 that up further.

23 MS. WANNARKA: Great.

24 BY MS. WANNARKA:

25 Q. Detective, would you please go into some detail about your

STARK - DIRECT

1 training and your classes, the EnCase software training, what
2 is required for that, and start from the beginning and take us
3 to present day.

4 A. Okay. I have taken EnCase training. I have taken the
5 basic, the intermediate and the advanced training for EnCase.
6 We have other forensic software that we use called FTK, which
7 is Field Toolkit. I have taken the basic and intermediate
8 classes on that. It is basically just another piece of
9 software that we use.

10 I have taken several hundred hours of training at
11 the Federal Law Enforcement Academy, starting with how a hard
12 drive works, all the way up to taking them apart and examining
13 them. And I mean, there are just several -- I have just taken
14 several hundred hours of different classes. I have had
15 cellphone forensic classes; any kind of digital -- all kinds
16 of digital media.

17 Q. Have you received training on advanced Internet
18 investigations?

19 A. Yes.

20 Q. And computer forensic, money laundering and financial
21 investigations?

22 A. Yes.

23 Q. Seized computer and evidence recovery training in Glencoe,
24 Georgia?

25 A. Yes. That is the Federal Law Enforcement Academy.

STARK - DIRECT

1 Q. Have you also achieved being a master peace officer?

2 A. Yes. I have been a police officer for 21 years.

3 Q. Did you receive some training from the United States Air
4 Force Office of Special Investigations?

5 A. Yes, I have.

6 Q. Describe that training.

7 A. That was a long time ago. It was at the Randolph Air
8 Force Base. It was just a class on digital media and
9 forensics.

10 Q. It appears -- or have you been to several trainings with
11 the Department of Homeland Security?

12 A. Yes. I have been to a few.

13 Q. And what were those trainings, specifically?

14 A. Without --

15 Q. Interagency computer forensic programs --

16 A. I'm sorry, ma'am.

17 MR. BASILE: Your Honor, I object to the leading of
18 the witness.

19 THE COURT: Sustained.

20 MS. WANNARKA: Your Honor, I would again tender him
21 as an expert. He has received extensive training from all
22 over the country, from the military, from the Department of
23 Homeland Security, hundreds of hours.

24 THE COURT: Any response?

25 MR. BASILE: Your Honor, while he might be an expert

STARK - DIRECT

1 on computers, and might agree with that on certain issues, but
2 as far as identifying who actually did something and who puts
3 something in a computer, I don't think he has been qualified
4 to that.

5 He may be able to testify to what is in the
6 computer, but I think the other is outside of the realm of the
7 expertise, so I will object to him on that.

8 THE COURT: He is accepted by the Court as an expert
9 in computer forensics. Now, that being established, I will
10 wait for the next question that you are going to ask him and
11 see whether it falls within the expertise.

12 BY MS. WANNARKA:

13 Q. During your -- or as a result of your forensic examination
14 with regard to Government's Exhibit 4, the desktop, did you
15 discover child pornography?

16 A. Yes.

17 Q. How many images did you discover?

18 A. There were sev --

19 MR. BASILE: Your Honor, I will have to object. I
20 don't think he has been qualified as to what is child
21 pornography and what is not. Him testifying about how many
22 images he found is something that is outside of his expertise
23 as a forensic computer scientist.

24 He may be able to testify what is in the computer,
25 but I don't think he can make that conclusion on what it

STARK - DIRECT

1 actually entails on that --

2 MS. WANNARKA: I will rephrase the question, Your
3 Honor.

4 BY MS. WANNARKA:

5 Q. Detective, during your training and in your experience
6 with working these types of cases, are you familiar with what
7 child pornography is?

8 A. I believe so, yes.

9 Q. And have you worked on cases, on child pornography cases
10 in the past?

11 A. Yes.

12 Q. How many?

13 A. Several hundred.

14 Q. And during that time, have you, as part of your training
15 and experience, seen and dealt with numerous images of child
16 pornography?

17 A. Yes.

18 Q. Back to Government's Exhibit 4, did you find child
19 pornography?

20 MR. BASILE: Your Honor, again, I am going to
21 object. He is still making a conclusion on what these images
22 are without any evidence that has been presented as to what is
23 in the images, whether it meets them all; he is making a
24 conclusion on a legal basis, and I don't think he is qualified
25 for that.

STARK - DIRECT

1 THE COURT: That is overruled.

2 BY MS. WANNARKA:

3 Q. Did you find images of young children?

4 A. Yes.

5 Q. And were they exhibiting or displayed in sexually explicit
6 conduct?

7 A. Yes.

8 Q. As a part of your forensic examination, did you create a
9 report or a printout of your findings?

10 A. Yes, I did.

11 Q. And does that report reflect the child pornography images?

12 A. Yes.

13 Q. Now, specifically, with regard to the Dell laptop,
14 Government's Exhibit -- I mean, the desktop, Government's
15 Exhibit 4, how many images of children displaying sexually
16 explicit conduct did you find?

17 A. The exact number, without referring to a report, I could
18 not -- I could not tell you. There are several.

19 Q. And that's a good lead-in.

20 MS. WANNARKA: Your Honor, may I approach?

21 THE COURT: You may.

22 BY MS. WANNARKA:

23 Q. Detective, I have just handed you what has been marked
24 Government's Exhibit 5, and I will ask you to review that for
25 a moment, please.

STARK - DIRECT

1 A. Okay.

2 Q. Do you recognize what that is?

3 A. Yes. This is my EnCase forensic report.

4 Q. And is that a printout, essentially, of your computer
5 findings?

6 A. Yes, it is. The computer creates the report.

7 Q. And has that report been altered or changed in any way?

8 A. No.

9 Q. Is that the report essentially that you printed out and
10 provided?

11 A. Yes.

12 MS. WANNARKA: Your Honor, the government offers
13 Government's Exhibit 5.

14 THE REPORTER: And, Counsel, if you will keep your
15 voice up, that will help me out.

16 MR. BASILE: Okay. I have no objection, Your Honor.

17 THE COURT: 5 is admitted.

18 BY MS. WANNARKA:

19 Q. Detective, in looking at your report, Government's Exhibit
20 5, are you able to say how many images of child pornography
21 are on Government's Exhibit 4?

22 A. It shows that I found ten.

23 Q. Now, with regard to those images, were they deleted
24 images?

25 A. Yes.

STARK - DIRECT

1 Q. What does that mean, exactly? Explain that to the jury.
2 When it says "deleted" or it shows that it is deleted, what
3 does that mean?

4 A. Deleted, a deleted file or image, it doesn't matter what
5 it is, but once it is deleted, it is put in an area on the
6 computer that is unused, basically. It is called an
7 unallocated cluster. It is an area on the computer that has
8 not been used and could be used again.

9 Q. And how were you able to retrieve those images?

10 A. EnCase pretty much does it. You run -- we run a script
11 and it looks for -- it looks for a unique header, and it is
12 actually called -- it is a little YOYA with a little tilde on
13 top that actually goes through all of the areas on the hard
14 drive looking for those headers, and if it finds those
15 headers, it will mark the beginning and the end of that file,
16 and then it will place it in an area in the report for you to
17 view at a later time.

18 Q. Now, so we do not have to show these images, are there
19 children in that report that are under the age of twelve?

20 A. Yes.

21 Q. Substantially under the age of twelve?

22 A. Yes.

23 Q. Are there children engaged in sadomasochistic behavior,
24 conduct, with regard to penetration?

25 A. Yes.

STARK - DIRECT

1 Q. I would like to turn your attention now to Government's
2 Exhibit 2, the Acer laptop. Did you also create a report with
3 regard to your examination of that laptop?

4 A. Yes, I did.

5 MS. WANNARKA: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MS. WANNARKA:

8 Q. I am showing you what has been marked as Government's
9 Exhibit 3 and ask you to review that report.

10 A. Okay.

11 Q. Is that a similarly printed-out report from your EnCase
12 examination?

13 A. Yes.

14 Q. Do you recognize that report?

15 A. Yes. It is a copy.

16 Q. And is that a copy of the report from, Government's
17 Exhibit 2, the Acer laptop with the hard drive in it?

18 A. Yes.

19 Q. Does it appear to be altered or changed or -- in any way?

20 A. No, ma'am.

21 Q. Does it appear to be essentially the exact report that was
22 generated from your EnCase examination?

23 A. Yes.

24 MS. WANNARKA: Your Honor, the government offers
25 Government's Exhibit 3.

STARK - VOIR DIRE

1 MR. BASILE: May I ask a couple of questions, Your
2 Honor?

3 THE COURT: Yes.

4 *-*-*-*-*

5 VOIR DIRE EXAMINATION

6 BY MR. BASILE:

7 Q. Detective Stark, in this report that you provided here,
8 Government's Exhibit 3, is this a report that you prepared
9 personally?

10 A. That report, it is a copy of my report.

11 Q. Okay. But the information that is contained in here, is
12 this information that you did yourself, or did your own from
13 an exam of the computer?

14 A. Yes.

15 Q. Is there any information that is provided by any other
16 person?

17 A. Any information -- no. Not in that report, no, sir.

18 Q. Has anything changed in this since the time you did it?
19 Have you had a chance to look at it?

20 A. Not that I know of, no.

21 Q. Have you had a chance to look at this to make sure?

22 A. Yes.

23 MR. BASILE: Then I have no objection, Your Honor.

24 THE COURT: 3 is admitted.

25 *-*-*-*-*

STARK - DIRECT

1 CONTINUED DIRECT EXAMINATION

2 BY MS. WANNARKA:

3 Q. Detective, I first would like to ask you about, with
4 regard to that report, the account name, the profile path, the
5 computer account name, the registered owner fields that --
6 with regard to those categories.

7 Did your EnCase examination reveal whose name was
8 entered into all of those categories?

9 A. Yes.

10 Q. And what name is that?

11 A. Operating system information, registered owner is Steve.

12 Q. Now, with regard to that report, and Government's Exhibit
13 2, did you find child pornography?

14 A. Yes.

15 Q. How many images of child pornography did you find?

16 A. 428.

17 Q. Well, of those images, were any of them deleted or saved?

18 A. It appears all of them in this report were deleted.

19 Q. Was there one image that was saved?

20 A. Yes. That's in another report.

21 MS. WANNARKA: Thank you. May I approach?

22 THE COURT: You may.

23 BY MS. WANNARKA:

24 Q. I am showing you what has been marked as Government's
25 Exhibit 6, and I will ask you to look at this report. Do you

STARK - DIRECT

1 recognize that?

2 A. Yes.

3 Q. How is that report generated?

4 A. It is also an EnCase report.

5 Q. And what does that report reflect?

6 A. It reflects one image that was taken -- used a digital
7 camera to be taken.

8 Q. Okay.

9 A. With. Excuse me.

10 Q. Is that report essentially in the same condition as when
11 it was printed out? In other words, has it been changed or
12 altered in any way?

13 A. No, it has not.

14 Q. That's the exact report that EnCase generated?

15 A. Yes.

16 MS. WANNARKA: The government offers Government's
17 Exhibit 6.

18 MR. BASILE: I have no objection, Your Honor.

19 THE COURT: 6 is admitted.

20 BY MS. WANNARKA:

21 Q. Let's start with Government's Exhibit 6. What image --
22 what is that image of?

23 A. It is a picture of a vagina.

24 Q. And that was the one image that was saved on the computer?

25 A. Yes, the one that I found saved.

STARK - DIRECT

1 Q. Now, with regard to that image, were you able to determine
2 what type of camera took that picture?

3 A. Yes.

4 Q. And what camera?

5 A. It is a Canon EOS Digital Rebel.

6 Q. Now, turning your attention back to Government's Exhibit
7 3, you had testified that there were 428 images and that they
8 were all deleted; is that correct?

9 A. Yes. It appears that way, yes.

10 Q. Now, for an image to be deleted, does that mean it had to,
11 at one time, be on the computer?

12 A. Yes.

13 Q. Explain that a little bit more.

14 A. I mean, you would have to -- it would have to be on the
15 computer for it to be deleted. I mean, it had to get there,
16 one way or another. Somebody had to either put it there or it
17 would be on the Internet and be downloaded and deleted off the
18 physical hard drive itself.

19 Q. And, again, to -- to not show those pictures, if you would
20 just provide testimony whether or not there are pictures of a
21 child engaged in sadomasochistic conduct, penetration.

22 A. Yes, there is.

23 MS. WANNARKA: I will pass the witness.

24 THE COURT: Anything?

25 MR. BASILE: Yes, Your Honor.

STARK - CROSS

--*-*-*-*-*

CROSS EXAMINATION

BY MR. BASILE:

Q. Detective Stark, as far as the computer, when someone deletes a computer file, what actually happens to it?

A. It goes into an area on the computer called an unallocated cluster. It is an area that has not been used on the computer. It is an unused area on the computer's hard drive.

Q. And when that -- what basically happens when someone deletes something off a computer, they delete off the access to that file, don't they?

A. In a normal environment, yes.

Q. Unless you have special software that you have?

A. Yes.

Q. Is that correct? You would have to have some special software to be able to access those files once they are deleted; isn't that correct?

A. You would have to have software in order to retrieve the data, yes.

Q. And you found no evidence of that type of software in this computer, did you?

A. Not that I recall, no, sir.

Q. And all the images that you found and everything but the one image had all been deleted; is that correct?

A. Yes.

STARK - CROSS

1 Q. And can you tell by your report when they were deleted?

2 A. No. That information is gone.

3 Q. Can you tell by your report how long they were on the
4 computer before someone deleted it?

5 A. No.

6 Q. So it could have been on a computer for a matter of just a
7 minute or two and deleted; isn't that correct?

8 A. It is possible.

9 Q. And you testified that the operator in this operating
10 system -- what do you mean by "operating system"? That would
11 be like the Windows system on the computer?

12 A. Yes. There is an operating system listed on here.
13 Actually, there are two, but the operating system on the -- is
14 a Windows Vista. (sic)

15 Q. And whoever basically sets up the computer, when you open
16 up Windows Vista or XP, they usually ask you for a name of
17 someone? Is that what you are talking about, an operating
18 system?

19 A. Are you asking about the registered owner?

20 Q. Well, you said that there was an operating system by the
21 name of Steve?

22 A. She asked me if there was a registered owner on the OS,
23 and it shows a registered owner of Steve.

24 Q. And when someone starts up a computer, which they would go
25 buy a new computer at Best Buy and they are buying a new

STARK - CROSS

1 computer, when you first start it up, it asks you to list a
2 name of someone who is going to be using the computer, doesn't
3 it?

4 A. It can, yes.

5 Q. And it asks you for a name, and you put your name in?

6 A. Yes.

7 Q. And then you become the registered operator of that
8 computer, don't you?

9 A. Yes.

10 Q. So anything that would happen on that computer would be
11 under that name, wouldn't it? As long as there is not another
12 file opened somewhere, it could be under that registered
13 operator's name, wouldn't it?

14 A. I would have to disagree with that, if I am following you
15 correctly. Just because there is a file on the computer, it
16 doesn't necessarily have to be under that name. I mean,
17 there's -- I mean, I don't think I am following you, actually,
18 correctly.

19 Q. Well, let me rephrase it. When you open up a computer and
20 you start the computer and it boots up, it usually shows who
21 the -- the person's name is on the front. It has, say, his
22 name, and there may be another one that is called guest or
23 someone else, right? There could be more than one registered
24 operator, couldn't there?

25 A. Yes.

STARK - CROSS

1 Q. So did you find any other names on this computer as a
2 registered operator?

3 A. There is an administrator and Steve-PC. And there was
4 also one that is generic that is created by Microsoft
5 automatically. It is a network connection.

6 Q. And sometimes they have one that is called guest, right?

7 A. Sometimes, yes.

8 Q. But usually, you just have the one. So anybody that did
9 anything on that computer would have been doing it under the
10 name of Steve, wouldn't they?

11 A. It could have been done under the administrator.

12 Q. And you can't tell by your report who did that?

13 A. No. Unfortunately, when you -- when it is in unallocated,
14 you lose that information.

15 Q. Okay. "Unallocated" just means parts of the hard drive
16 that aren't being used; is that correct?

17 A. Correct.

18 Q. And basically, when we are talking about a hard drive, we
19 are talking about a bunch of switches, aren't we? That's how
20 a computer works?

21 A. Switches.

22 Q. Like a binary system?

23 A. It is more like a platter, yes.

24 Q. So those are particular places that have not had anything
25 saved on them; is that what you are talking about,

STARK - CROSS

1 "unallocated"?

2 A. Not necessarily. But, yes, it is an area that is being
3 unused at that time.

4 Q. Now, you also did a report on a digital camera; is that
5 correct, a Canon?

6 A. No, I did not do that.

7 Q. Okay.

8 A. On the camera itself?

9 Q. Or just maybe on the image from the camera.

10 A. Yes.

11 Q. All right. And I am assuming the same principles apply to
12 that, because it is digital media, as it does to a computer?
13 As far as, is there any way of actually finding out who took
14 that photograph off of that digital media?

15 A. The media itself, this picture was on the computer's hard
16 drive. I don't know if you are confusing the camera with the
17 hard drive.

18 Q. Let me rephrase the question. So this photograph that you
19 are talking about had been saved on a computer hard drive,
20 correct?

21 A. Yes, sir.

22 Q. And that had been saved as a digital -- like a JPEG or
23 something like that?

24 A. Yes, it was.

25 Q. All right. And there is no way of telling exactly who did

STARK - CROSS

1 that by looking at the computer, is there?

2 A. No. Just the directory that it is under.

3 Q. And that directory would be, what, like my pictures or
4 something like that?

5 A. It is under Steve application data, Windows photo gallery,
6 original images, and the image name is IMG-3375.

7 Q. IMG means image, doesn't it?

8 A. Image. That is created -- that is created normally by the
9 camera or the program that you are using to import the
10 picture.

11 Q. All right. And the original part with the name Steve is
12 on there because that's the name that the operating system is
13 named after; is that correct?

14 A. User Steve, yes.

15 Q. All right. So everything in that computer that is used
16 through Steve would have his name on there somewhere?

17 A. If it is in an allocated area on the computer, it may. I
18 mean --

19 MR. BASILE: May I have just a minute, Your Honor?

20 THE COURT: You may.

21 MR. BASILE: I have no further questions at this
22 time, Your Honor.

23 MS. WANNARKA: Nothing further, Your Honor.

24 THE COURT: You may step down. Thank you, sir.

25 THE COURT: Your next witness.

MARTIN - DIRECT

1 MS. WANNARKA: Captain Greg Martin.

2 COURTROOM DEPUTY: Could you raise your right hand.

3 (Oath administered to the witness.)

4 COURTROOM DEPUTY: Thank you.

5 *-**-**-**-**-**

6 DIRECT EXAMINATION

7 BY MS. WANNARKA:

8 Q. Captain, please tell the jury your name.

9 A. Greg Martin.

10 Q. How are you currently employed?

11 A. I am the captain of security operations at the Guadalupe
12 County Adult Detention Center.

13 Q. Are you also a certified peace officer?

14 A. I am.

15 Q. How long have you been the captain for the Guadalupe
16 County Jail?

17 A. I have been the captain at a year.

18 Q. As part of your duties, are you also the point of contact
19 for all issues regarding inmate mail?

20 A. I am.

21 Q. Has a Stephen Mouton been housed at your jail?

22 A. He has.

23 Q. Why would a federal inmate be housed at the Guadalupe
24 County Jail?

25 A. We have a 600-bed facility, with our current county

MARTIN - DIRECT

1 population being about 300, so what we do is, to offset that,
2 we sell out bed space. The U.S. Marshals are one of our
3 clients.

4 Q. Now, with regard specifically to inmate mail, is it
5 subject to search and inspection?

6 A. Yes. All mail that is not considered privileged is
7 subject to search and inspection.

8 Q. What would privileged mail be?

9 A. Mail to their attorneys, mail to the courts, the
10 president, places like that.

11 Q. Is mail coming in to them searchable as mail going out
12 from them?

13 A. Yes. Both inbound and outbound mail is subject to the
14 same rules.

15 Q. Now, if law enforcement wants copies of inmate mail, would
16 they go to you to make that request?

17 A. Yes. The sheriff has given me a directive that anybody
18 who wishes, any of our agents that wish to can contact me.
19 They request it in writing, he gives approval and we photocopy
20 that and forward it to the requesting agency.

21 Q. Let me show you what has been marked as Government's
22 Exhibit 18, 19, 20 and 22 and 23.

23 MS. WANNARKA: Your Honor, may I approach?

24 THE COURT: You may.

25

MARTIN - DIRECT

1 BY MS. WANNARKA:

2 Q. And I will ask that you look at those letters to see if
3 you recognize them, please.

4 A. Yes. These are letters that were -- that came through the
5 facility.

6 Q. How are you able to identify them specifically?

7 A. In this particular case, we have a specific indigent
8 envelope that has a date on it, as well as on the reverse side
9 of the envelope, we also have the inmate's name, their
10 sheriff's office number and our information here as well, and
11 that is photocopied with the letters when we forward them on
12 to agencies, and all of these appear to have that stamp.

13 Q. So all of those exhibits were copied by you and your staff
14 at the request of law enforcement?

15 A. They were, correct.

16 MS. WANNARKA: Your Honor, the government offers
17 Government's Exhibits 18, 19, 20, 22 and 23.

18 MR. BASILE: 18, 19. What --

19 MS. WANNARKA: 18, 19, 20, 22 and 23.

20 MR. BASILE: Your Honor, I would have some
21 objections to some of the content of these letters, pursuant
22 to prior discussions with the Court.

23 THE COURT: Come on up.

24 (Bench conference, as follows:)

25 THE COURT: Which exhibit number are you referring

MARTIN - DIRECT

1 to?

2 MR. BASILE: Your Honor, there is some mention in
3 some of these letters about proceedings by CPS, which I think
4 would be -- they are prior bad acts --

5 THE REPORTER: Counsel, if you could speak closer to
6 the mike.

7 MR. BASILE: I would object to certain portions.
8 They have redacted out some portions, but other portions
9 specifically left, 22, if I remember right, that talks about
10 CPS and dealings with CPS, doctrines of CPS and court
11 proceedings, which I think would be highly prejudicial, under
12 404(b), and I would object under that, and under 609, to show
13 that he acted in conformity with what the allegations are. To
14 those things, I object, to have those portions redacted out of
15 the letters before they go to the jury.

16 THE COURT: Okay. Let's do one at a time.
17 Exhibit 18. I don't see anything in there; am I right?

18 MR. BASILE: That is correct, Your Honor.

19 THE COURT: 18 is admitted.

20 THE COURT: Number 19?

21 MR. BASILE: I don't think there is anything in that
22 letter.

23 THE COURT: 19 is admitted. Number 20?

24 MR. BASILE: There is nothing in 20, Your Honor.

25 MS. WANNARKA: 22 and 23.

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1 THE COURT: 20 is admitted.

2 MR. BASILE: 22, as I mentioned, the first part
3 about CPS -- FBI, sheriff's department, other accusations,
4 first part --

5 THE REPORTER: Counsel, closer to the mike, please.

6 MR. BASILE: Okay. I'm sorry. That is starting
7 really with the second paragraph, Your Honor, but mainly the
8 third paragraph, it talks about CPS being involved -- maybe a
9 year, maybe later -- CPS representative --

10 THE COURT: It doesn't refer to anything in the
11 past.

12 MR. BASILE: No, that is correct.

13 THE COURT: So the jury can walk away believing all
14 of this was as a result of them finding this stuff, and then
15 the first witness contacting the CPS.

16 MS. WANNARKA: There is testimony that the
17 Investigator Gebauer contacted CPS.

18 MR. BASILE: There is nothing else in that letter
19 that I have a problem with, Your Honor, on Number 22.

20 THE COURT: Yes. Your objections are noted on 22
21 and are overruled.

22 MR. BASILE: Okay.

23 THE COURT: 22 is admitted. 23?

24 MR. BASILE: I have no objection on that one. There
25 is nothing in that one, Your Honor. Just 22.

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1 THE COURT: 23 is admitted.

2 (End of bench conference.)

3 MS. WANNARKA: Your Honor, with those letters
4 admitted at this time, I would like to publish small portions
5 of a few of them.

6 THE COURT: Granted.

7 Now you can hit the lights.

8 MS. WANNARKA: God, Kinsey was in a coma! Please
9 don't take this wrong because it is not directed at anyone in
10 particular, but please allow their kids to get -- but people
11 allow their kids to get so obese that their health is in
12 jeopardy and self-esteem is changed for life. Nothing is
13 said. I take a few pictures of A and am prosecuted to no end.
14 A would have no memory of it, and surely no adverse effects
15 had the government bullies not stepped in and raped us.

16 That was from Government's Exhibit 19.

17 From Government's 20. I don't know what you've been
18 told but I will just give you a short synopsis. Basically, I
19 had some pictures on my computer of Amanda and the FBI
20 deemed -- that the FBI deemed inappropriate. I had deleted
21 them from my computer some years ago, but the feds, as if the
22 bastards don't have anything better to do, were able to
23 reconstruct those old files and come and get me.

24 Also from Government's Exhibit 20. Margarite is
25 petitioning for divorce and is trying to take everything.

MARTIN - DIRECT

1 Rod, what I did is technically wrong, but my God, not that
2 wrong that I should lose daughter, wife, and everything else.
3 Not to mention how much time they'll want to put me away for.
4 Amanda and I were closer than I have ever been with another
5 person in my whole life and was thriving in my care. She was
6 straight A's, a brilliant violinist, concertmaster in the
7 junior high orchestra and All City orchestra, great at tennis,
8 gymnastics, and lots of other sports that she and I would
9 play. These were no accidents as I was closely involved in
10 all of her school and sports activities and projects. She
11 had/has tons of common sense and a joy to be around. She
12 always made me laugh, almost like my own private court jester.
13 Yes, she loved me, and I do her, with no reserve. Now they've
14 taken her away. Margarite's relationship with her was
15 extremely tumultuous. I was the buffer between the two of
16 them.

17 From Government's Exhibit 22. This is the main
18 reason I am writing to communicate to you both and Amanda the
19 lies the FBI and sheriff's department concocted and
20 perpetrated. They made up things about me and M. Basically,
21 there were some pictures. That is all. I deleted these
22 pictures some years ago and the FBI was able to reconstruct
23 them. As far as Amanda and I were concerned, they were
24 destroyed. The FBI made copies and dispersed them to many,
25 many departments and CPS, sheriff's department and so on.

Karl H. Myers, CSR, RMR, CRR - (210) 212-8114

MARTIN - DIRECT

1 Completely uncalled for. I don't know what you all have been
2 told, but the pictures are all I have done, nothing more.

3 As I mentioned, the only truth is a handful of old,
4 deleted pictures. That's all. As you well know, Amanda and I
5 enjoyed a wonderful, wholesome relationship. She always knew
6 I was there for her and supported her in every way. She is
7 brilliant, talented, witty and many other things. This was no
8 accident. She had a father that loved her and cared. You
9 know that! You can only imagine the pain and sorrow I am
10 going through. I cry for Amanda every day. I would give my
11 whole world to be with her again. I hope you communicate this
12 to her as well as telling her about the lies FBI and CPS told
13 her.

14 And lastly, from Government's Exhibit 23. Okay,
15 guys. Time to get very serious. You will have to act on the
16 very -- act on this the very minute you receive this letter.
17 I wanted to do this on page 2 of this letter to keep prying
18 eyes away. I am starting to shake so bear with me.

19 Fact. The DA is hell-bent on putting me away for
20 life. Fact. I have been covering to protect A and M,
21 especially A, thinking I would get a short sentence and be
22 done. As you can see, this is not to be. Now I need
23 protection and a savior, in the name of you, B and W and A.
24 This is extremely important.

25 Fact. A needs to tell the truth and my lawyer

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1 agrees, namely, that -- asterisks -- that the young man who
2 took the pictures of her no longer lives in Boerne. No longer
3 lives in Boerne. It has been more than four years and she
4 can't remember his name.

5 When asked by me who he was, she would not tell.
6 Her daddy did not take the pictures. Asterisk. This is all
7 she needs to say. After saying what will clam up and say
8 nothing more.

9 This is very important. She is a minor and cannot
10 be forced to say more. It is very important that she
11 remembers the truth, what is written between the asterisks
12 above.

13 The FBI, sheriff's department and CPS has built a
14 case against me based on scores of lies. We will have to pull
15 together as a family and fight back. You saw what they did to
16 you and me, all of us. They pulled no punches with their
17 brute bullying, destruction and lies. It is important we
18 fight back.

19 B and W have to talk to A about this immediately and
20 memorize the truth above. They will probably retain custody
21 and I will lose my rights, but most important of all, I do not
22 need to go to prison for life. A needs to be ready to testify
23 immediately. Read this several times. Call B and W, and even
24 do a conference call with B, W and A.

25 Your Honor, I will pass the witness.

HILER - DIRECT

1 THE COURT: Any questions?

2 MR. BASILE: I have no questions of this witness,
3 Your Honor. Just the option to be able to introduce other
4 portions of these letters.

5 THE COURT: You may at the time you see fit.

6 You may step down.

7 Ladies and gentlemen, at this time, let's go ahead
8 and take our afternoon break. Again, I instruct you not to
9 deliberate about this case. We are not anywhere near the
10 deliberation stage.

11 Don't talk about this case at all amongst
12 yourselves. Don't talk about the evidence you have seen or
13 heard so far. Talk about other things, take a break, and we
14 will come back in 15 minutes after the hour.

15 All rise for jury.

16 (Brief recess.)

17 THE COURT: Please be seated.

18 MS. BRAUN: Government calls Sean Hiler.

19 COURTROOM DEPUTY: Could you please raise your right
20 hand.

21 (Oath administered to the witness.)

22 COURTROOM DEPUTY: Thank you.

23 *-*-*-*-*-*-*

24 DIRECT EXAMINATION

25 BY MS. BRAUN:

HILER - DIRECT

1 Q. Please state and spell your name for record.

2 A. Sean Hiler. S-e-a-n H-i-l-e-r.

3 Q. Where are you employed?

4 A. Texas Department of Family and Protective Services.

5 Q. What is your occupation there?

6 A. I am a child abuse investigator.

7 Q. How long have you had that occupation?

8 A. Since April of 2007.

9 Q. Describe your educational background for the jury.

10 A. I have bachelor's degrees in sociology, psychology and
11 criminal justice. I have completed a master's degree in
12 business administration with emphasis on organizational
13 psychology.

14 Q. Prior to working as a child abuse investigator, were you
15 employed as a juvenile court case manager?

16 A. Yes, I was.

17 Q. Where was that?

18 A. In Clark County, Ohio.

19 Q. What were your duties and responsibilities in that
20 occupation?

21 A. Case management of juvenile sex offenders.

22 Q. When you came to Texas and got a job as a child abuse
23 investigator, in that position, have you obtained any
24 specialized training?

25 A. Yes, I have.

HILER - DIRECT

1 Q. Describe that, please.

2 A. I've completed the basic skills development training and I
3 have also completed advanced specialist certification -- or
4 specialist certification, not advanced specialist.

5 Q. What does that entail?

6 A. Various trainings on child and adolescent development. I
7 have taken specifically sex offender classes, behavioral
8 analysis classes. Excuse me. Just continued education in the
9 field.

10 Q. As a child abuse investigator, what are your duties and
11 responsibilities? What do you do?

12 A. My job is to investigate allegations of child abuse or
13 neglect when it comes in and to determine whether there is a
14 preponderance of the evidence to support the allegation.

15 Q. If you are not able to support the allegation by a
16 preponderance of the evidence, what happens to those cases?

17 A. Then we come to what is called a ruled-out finding, which
18 is essentially a civil version of not guilty, as I understand
19 it. Then we have -- we can either close the case out with no
20 significant risk factors, close the case out with what we call
21 risk factors controlled, and, thirdly, we can continue to keep
22 the case open, if there is risk indicated to the child.

23 Q. Okay. If you are able to determine by a preponderance of
24 the evidence that the allegations are supported, what happens?

25 A. We would come to a reason to believe finding, and we would

HILER - DIRECT

1 have essentially, more or less, the same options. We could
2 close the case with risk factors controlled. We could forward
3 the case on to our Family-Based Safety Services Unit, which is
4 up to one year of voluntary case management. Or if the child
5 is not protected by either parent and we do not have someone,
6 a family member or relative that we feel safe placing the
7 child with, at that point, we could request that the Court
8 grant us custody, and then we would place the child in foster
9 care or at a residential treatment facility or shelter.

10 Q. Are you familiar with the defendant in this case, Steve
11 Mouton?

12 A. Yes, I am.

13 Q. How are you familiar with him?

14 A. I was the investigator on the case involving the sexual
15 abuse by him of his daughter, Amanda Mouton.

16 Q. Were you -- was a referral made to Child Protective
17 Services on October 18th of 2007?

18 A. Yes, there was.

19 Q. Where did the referral come from?

20 A. It came from our statewide intake department.

21 Q. Was the referral made by Kendall Gebauer from the Kendall
22 County Sheriff's Office?

23 A. I am not allowed to say where the referral was made. That
24 is confidential.

25 Q. Okay. Is that when you became involved in investigating

HILER - DIRECT

1 this case?

2 A. Yes, it is.

3 Q. Did you contact anybody to obtain background information?

4 A. Well, I looked through our records as to -- if -- to
5 see -- we do background checks, criminal background checks,
6 and we also do our own background checks for our agency to
7 determine if there is a case history with the family.

8 Q. In October of 2007, were you given information that a
9 pornographic picture was located on the defendant's computer?

10 A. Yes, I was.

11 Q. Did that allow you to open up an investigation involving
12 Mr. Mouton?

13 A. Yes, it did.

14 Q. How did that investigation conclude in the fall of '07?

15 A. It was, found reason to believe that Steven Mouton did
16 sexually abuse Amanda Mouton. The case was closed with risk
17 factors controlled, because of the bond conditions that had
18 been set for Steven Mouton, forbidding him to have contact
19 with Amanda Mouton.

20 Q. So Investigator Hiler, if I understand you correctly, at
21 this time, in October of 2007, it is determined that
22 Mr. Mouton can no longer live or have -- live with or have
23 contact with his daughter, Amanda?

24 A. That was correct. There was a period of time that the
25 Court allowed him to be at the home during the day to fix

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1 heating and air conditioning equipment at the home, but he was
2 not to be there when she was there, and it was, I believe, for
3 only five days he was allowed to complete those projects.

4 Q. And then with Mr. Mouton out of the home, that was
5 sufficient protection of Amanda, correct?

6 A. Correct.

7 Q. In April of 2008, specifically, on April 7 of 2008, were
8 you contacted again regarding Mr. Mouton?

9 A. Yes, I was.

10 Q. Were you asked to assist the Kendall County Sheriff's
11 Department and the FBI?

12 A. Yes, I was.

13 Q. What were you asked to assist with?

14 A. I was asked to assist in possibly taking custody of Amanda
15 Mouton, because of information that Steve Mouton had been
16 allowed back in the home.

17 Q. Did you work with the FBI and the Kendall County Sheriff's
18 Department on April 9th of 2009, (sic) when the defendant was
19 arrested and search warrants were executed?

20 A. Yes.

21 Q. What involvement did you have?

22 A. My involvement during the actual -- excuse me -- raid on
23 the family's residence, I just actually just sat in the patrol
24 car while the FBI and the sheriff's department actually went
25 into the home and brought Amanda Mouton out.

HILER - DIRECT

1 I went -- after she was brought out, the FBI took
2 her down to San Antonio to Child Safe for a forensic
3 interview, and I followed with Officer Gebauer, and we went
4 down to the forensic interview.

5 Q. What is a forensic interview?

6 A. A forensic interview is an interview that is audio
7 recorded and video recorded, for the purposes of allowing a
8 child to only tell her story or his story one time, so that
9 the victim is not repeatedly interviewed time and time again
10 during the course of the criminal or civil proceedings.

11 Q. Was Amanda Mouton forensically interviewed on April 9th of
12 2008?

13 A. Yes, she was.

14 Q. After she had a forensic interview, was she returned to
15 either her mother, Margarite Mouton, or her father, Steve
16 Mouton?

17 A. I do not believe she was.

18 Q. Did you interview Amanda Mouton?

19 A. I interviewed her separately with our special
20 investigator, Dennis Paez.

21 Q. And did that take place on April 10th of 2009? (sic)

22 A. I believe so, yes.

23 Q. Where did that interview take place?

24 A. At the Child Protective Services office in Boerne, Texas.

25 Q. What was the purpose of that interview?

HILER - DIRECT

1 A. We had, at this point, taken -- the State had taken
2 custody of Amanda Mouton at that point. She was brought to us
3 so that we could take her to her foster home. And while she
4 was there, we asked her if Steven Mouton had actually been at
5 her home and if her mother knew that he had been at the home.

6 She had answered that, yes, he had been at the home
7 for the week preceding the time that she was taken into
8 custody, and that her mother knew that he was in the home
9 during that time, that she had seen them speaking together.

10 Q. So you mentioned earlier that there was a reason-to-
11 believe finding made that sexual abuse had occurred between
12 Mr. Mouton and his daughter Amanda, correct?

13 A. That is correct.

14 Q. So he would not be allowed to have custody or even contact
15 with her?

16 A. That is correct.

17 Q. And then with regard to her mother, Margarite Mouton, you
18 received information that Margarite Mouton allowed Mr. Mouton
19 to have contact with Amanda, therefore, putting her in danger?

20 A. That is correct.

21 Q. And so at that time, Amanda was taken into CPS custody and
22 put into foster care?

23 A. That is correct.

24 Q. Did you interview Margarite Mouton?

25 A. Yes, I did.

HILER - DIRECT

1 Q. When did that interview take place?

2 A. I do not -- I do not recall the date that it took place.

3 Q. Could it be April 11th of '09, a day after you interviewed
4 Amanda?

5 A. Yes.

6 Q. Do you recall where the interview of Margarite Mouton took
7 place?

8 A. I met with her at her home, to pick up Amanda's belongings
9 to take down to the foster care. I also spoke with her at her
10 attorney's office on a later date.

11 Q. I'm sorry. I said 2009. I meant 2008.

12 A. Oh. 2008.

13 Q. Was it 2008?

14 A. It was 2008.

15 Q. Sorry. Once I make that shift to the next year, I have a
16 hard time going back. Did you also interview the defendant,
17 Steve Mouton?

18 A. Yes, I did.

19 Q. Did that interview take place on April 15th of 2008?

20 A. Yes, it did.

21 Q. Where did that interview take place?

22 A. At the Central Texas detention facility.

23 Q. Specifically, what type of room did it take place in?

24 A. It was a visiting room. There were multiple windows and
25 stalls set up, and Mr. Mouton and I spoke to each other

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1 through a glass window.

2 Q. Who was present during the interview between you and
3 Mr. Mouton?

4 A. When I was interviewing him, it was just Mr. Mouton and
5 myself, but Warden Proctor did go and get Mr. Mouton's glasses
6 for him, so that he could read the paperwork that I handed
7 him.

8 Q. How long did that interview with the defendant last?

9 A. I would say approximately a half hour to 45 minutes.

10 Q. How did you introduce yourself to him?

11 A. I introduced myself as the investigator on the case and
12 explained to Mr. Mouton that I had a waiver of service, so
13 that I could serve him with the CPS court paperwork, and also
14 for relinquishment of parental rights, if he chose to
15 relinquish his parental rights at that time.

16 Q. Explain that. What do you mean, the waiver of service for
17 the CPS paperwork?

18 A. When you file -- when the State is awarded custody of a
19 child, temporary managing conservatorship and we take custody
20 of the child, there is a hearing set within 14 days after the
21 child is taken into custody called the adversary hearing, and
22 paperwork has to be served to the plaintiffs in the case, so
23 that they know when to appear in court.

24 Normally, this is done by a process server. That
25 can be done by CPS personnel, if the plaintiff is willing to

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1 sign a waiver of service. That means that they are not
2 requiring a process server to actually serve them. They are
3 accepting the paperwork that we give them as the paperwork.

4 Q. And did you explain all of that to Mr. Mouton?

5 A. Yes, I did.

6 Q. You also had with you the voluntary relinquishment of
7 parental rights paperwork. What is that?

8 A. That is paperwork where Mr. Mouton would be able to sign
9 away his parental rights. At that point, he would no
10 longer -- if he signed the paperwork, he would no longer be
11 considered Amanda Mouton's parent. I explained to him that
12 our agency was going to seek aggravating circumstances and
13 seek to terminate his parental rights, and that by signing the
14 voluntary relinquishment papers, it would save Amanda from
15 having to go to a possible hearing to testify in that.

16 Q. What does it mean to seek aggravated circumstances? Did
17 you explain -- did you explain to him what that meant, and
18 then can you explain to the jury what that means?

19 A. Okay. Aggravating circumstances are circumstances that we
20 deem beyond the normal, I guess, scope of child abuse or child
21 neglect, in this case, being the pornography that was made
22 with his daughter. In cases like that, we seek to, if there
23 are aggravating circumstances, we seek to terminate parental
24 rights, because of the egregiousness of the act.

25 Q. And did you explain to him that this is what was happening

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1 and that the State was going to seek to terminate his parental
2 rights?

3 A. Yes, I did.

4 Q. What did he say, if anything, about relinquishing his
5 parental rights?

6 A. He asked to review the paperwork. And when his glasses
7 were brought to him by Warden Proctor, he reviewed the
8 paperwork, and then he said he would have to think about it.

9 Q. When you interviewed Mr. Mouton, did you read him or
10 advise him of his rights against self-incrimination?

11 A. Yes, I did.

12 Q. Why? Are you obligated to?

13 A. No, I am not. I am a civil investigator, not a criminal
14 investigator, but I understood that he had an attorney that
15 was representing him in another matter, and I had spoken to
16 that attorney before I went to see if he would sign the
17 relinquishment papers or be served, and he stated that he was
18 not representing Mr. Mouton on the civil case or the federal
19 case.

20 And so when I went to speak with Mr. Mouton, I
21 explained to him that he did not need to speak to me, if he
22 did not want to, that he was entitled to have an attorney in
23 the civil litigation, and that it would require that he file
24 as an indigent, if he did not have the money for an attorney,
25 and after an indigency trial, he would be appointed an

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1 attorney at that time.

2 Q. Did he appear to understand what you were telling him?

3 A. Yes, he did.

4 Q. Did he indicate whether or not he still wanted to speak
5 with you?

6 A. At the onset of our conversation, that was -- speaking to
7 me further was not necessarily brought up. When I explained
8 to him that we were going to be terminating or seeking to
9 terminate his parental rights, he asked if we would also be
10 seeking to terminate Margarite Mouton's parental rights, and I
11 stated that that was a possibility.

12 At that point, he stated that he wanted to put in a
13 good word for Margarite Mouton. And I, once again, told him
14 he didn't need to speak to me, if he didn't have an attorney.
15 And he said: No. He said: You are only looking at the legal
16 aspect of this. You don't understand the emotional aspect of
17 it. At that point, I sat down and he began to tell me what he
18 thought the emotional aspect was.

19 Q. What do you recall him telling you?

20 A. He stated that I did not understand the relationship that
21 he and Amanda Mouton had. He stated that it was a beautiful
22 relationship and that the pictures that he took of her, she
23 enjoyed having them taken. I told him that from having seen
24 her reaction to having seen the pictures, she did not seem to
25 appreciate it.

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1 Q. When he talked about it being beautiful, did he tell you
2 what he and Amanda called their picture-taking sessions?

3 A. Yes. He called it -- he said that they called it sexy
4 time and sexy pictures.

5 Q. Did he tell you how long he had been taking pictures of
6 this little girl?

7 A. He stated that he had been taking pictures of her
8 essentially since the time they adopted her and that he had
9 documented her growth into a woman with these pictures.

10 Q. Did he indicate to you whether or not he had stopped
11 taking pictures of Amanda?

12 A. Yes, he did. He stated that he had stopped taking
13 pictures in the recent past, at the point of my interview with
14 him, because he felt that it was wrong and that she would not
15 like having those pictures being around as she grew older.

16 Q. When you indicated to Mr. Mouton that Amanda didn't seem
17 to have a good reaction when she saw the pictures, what
18 specifically do you recall telling him?

19 A. I believe I told him that she did not -- when he said that
20 she enjoyed having the pictures taken, I said that she did not
21 appear as though she enjoyed it when the pictures were shown
22 to her at the forensic interview.

23 Q. What was his reaction?

24 A. He stated, they didn't show her the pictures where I
25 penetrated her, did they? And I stated that they had, and he

HILER - DIRECT

1 said that -- he said something about calling the FBI bastards.

2 "I hate the FBI, those bastards," I believe is what he said.

3 Q. Did he indicate anything else about Amanda's condition
4 when he would sexually penetrate her?

5 A. Yes. He stated that she was always asleep during this
6 time and that she did not know that it was going on.

7 Q. Did Mr. Mouton give you any indication as to the amount of
8 knowledge, if any, his wife, Margarite Mouton, had that -- of
9 Mr. Mouton either taking pornographic pictures of Amanda or
10 having sex with Amanda?

11 A. He stated that she had no idea that it was going on, that
12 it either happened while she was at work or out of the home
13 for some other reason.

14 Q. Did you talk to Mr. Mouton also about whether he had had
15 recent contact with Amanda, whether he had been in the home in
16 the last week?

17 A. Yes, I did. And he stated that he had, indeed, been in
18 the home and that Margarite Mouton had asked him to come
19 into -- come back into the home. He stated that he moved back
20 into the home as soon as the safety plan that CPS, that I had
21 made with Margarite Mouton expired, when the case was -- the
22 first case that I had with the family was closed.

23 He stated that shortly after the safety plan had
24 ended, Margarite Mouton asked him to come back into the home,
25 because she felt that it was in Amanda's best interests that

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1 her father be in the home.

2 Q. After Mr. Mouton admitted to you that he had sexually
3 penetrated his daughter and that there were pictures of it,
4 did he talk about the relationship -- how Amanda felt about
5 him or how he thought Amanda felt about him?

6 A. Yes. He stated that, he told me -- let me see. He told
7 me that if I were to ask Amanda if she wanted to go back home,
8 she would say yes, that she enjoyed the time that they had
9 together, taking the pictures and life in general at the home.

10 Q. How did you respond to that? Well, based on your training
11 and experience, were you surprised to hear that?

12 A. No. Because of Stockholm Syndrome, children that are
13 abused generally do not like the abuse when it first begins,
14 but they begin to grow comfortable with it, accepting it as a
15 normal part of life, and I stated that it was not uncommon for
16 this to happen in children or victims of sexual abuse.

17 Mr. Mouton told me that she was a very well-adjusted
18 young girl, that she was doing well in school and was a
19 virtuoso on the violin. And I stated that, yes, that she was
20 doing well in school, and that she was very talented, but her
21 excelling in school and just the wonderful job that -- that
22 she has made out of her life has been due to her resiliency,
23 not to her love for the relationship.

24 Q. Did the interview end shortly after that?

25 A. Yes, it did. It ended just a couple of minutes after

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1 that, and he had asked me on -- as I was getting ready to
2 leave, he asked me if I would tell Amanda something for him.
3 And I said: What is that?

4 And he said: Will you tell her I like pie?

5 And he said there is no sexual connotation to it.
6 He said it is just something between me and her. She will
7 know what I am talking about. It is a line from SpongeBob
8 SquarePants. And that was the -- I believe the last thing
9 that we said to each other.

10 Q. Did you have any further contact with Mr. Mouton after
11 April 15th of '08?

12 A. No, I did not.

13 MS. BRAUN: Thank you. Nothing further.

14 THE COURT: Any questions?

15 MR. BASILE: Just a couple, Your Honor.

16 *-*-*-*-*-*-*

17 CROSS EXAMINATION

18 BY MR. BASILE:

19 Q. Is it Hiler; is that correct?

20 A. Hiler. That is correct.

21 Q. And you are the CPS investigative worker; is that correct?

22 A. That is correct.

23 Q. So was there ever any type of legal proceedings filed on
24 this particular case?

25 A. Yes, there were. Once I had requested the order to remove

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1 from the Kendall County judge and that was given to me, at
2 that point, there is the adversary hearing. Once a child is
3 taken into custody, they have the adversary hearing within 14
4 days after CPS takes custody. The case was forwarded on to
5 our conservatorship unit and that was assigned to another
6 worker.

7 Q. So after the adversary hearing, or what is called the 262
8 hearing, it proceeded on to the other phase; is that correct?

9 A. That is correct.

10 Q. All right. And isn't it true, ultimately, in the case,
11 Mr. Mouton signed his rights away to his child?

12 A. I believe that is the case. I wasn't involved after the
13 investigation. I am not sure.

14 Q. So after the 262 hearing, the adversary, you were not
15 involved in the case anymore?

16 A. That is correct.

17 MR. BASILE: I have no further questions, Your
18 Honor.

19 THE COURT: Anything further?

20 MS. BRAUN: Nothing further. Sorry.

21 THE COURT: You may step down. Thank you.

22 MS. BRAUN: Government calls Susan Landrum.

23 COURTROOM DEPUTY: Could you raise your right hand.

24 (Oath administered to the witness.)

25 COURTROOM DEPUTY: Thank you.

LANDRUM - DIRECT

*-**-**-**-**-*

DIRECT EXAMINATION

BY MS. BRAUN:

Q. Please state your name, and spell your last name for the record.

A. My name is Susan Landrum, L-a-n-d-r-u-m.

Q. What is your occupation?

A. I am a Child Protective Services caseworker.

Q. How long have you been a Child Protective Services caseworker?

A. For two and a half years.

Q. Who is your employer?

A. The State of Texas, Department of Family and Protective Services.

Q. What is your educational background?

A. I have a finance degree, a bachelor's degree from Austin College.

Q. As a Child Protective Services caseworker, do you have any specialized training in how to perform those job functions?

A. The State has a very rigorous training program. I have over 600 hours of training, most of which I received before taking any cases.

Q. What are your duties and responsibilities as a caseworker?

A. I am what is called a legal caseworker, and my responsibilities include working with the children who have

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1 been brought into the custody of the State. I work with the
2 foster families, who are placements for the children who have
3 been removed from their parents, and I work with the parents,
4 to help in any way that I can to help them with their services
5 in an effort to be reunified with their children.

6 Q. So CPS has different types of caseworkers?

7 A. That's right.

8 Q. There is the legal caseworker, which you are?

9 A. Yes.

10 Q. And then there are investigative caseworkers?

11 A. Yes.

12 Q. And what does an investigative caseworker do?

13 A. An investigative caseworker is the caseworker who goes out
14 when we receive a referral. We have a statewide database and
15 800 number, so if a call comes in where there is abuse or
16 neglect that has been alleged, the investigator gets that case
17 and then works the case, goes out to meet with the families,
18 goes out and talks to the children, talks to any collaterals
19 that may have, you know, called the referral in. And the
20 investigator then, along with the supervisor and program
21 director, makes a decision, ultimately, whether or not to
22 recommend that the child is removed from the parent's care.

23 Sometimes a child isn't removed and they discover
24 that the call didn't warrant abuse or neglect, and sometimes
25 the investigator makes a recommendation that the case goes to

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1 Family-based Services, where the children remain in the
2 custody of their parents, but we give them services to
3 perform -- to help them do better, you know, address the
4 issues that were discovered in their families that led us to
5 get into their lives.

6 Q. Is it safe to say the investigative caseworker
7 investigates the case and then develops a safety plan, finds a
8 safe place for this child, whether it is with one parent, both
9 parents or none of their parents?

10 A. Correct.

11 Q. And so if -- as a legal caseworker, you are not involved
12 in every case that comes in through CPS?

13 A. Correct.

14 Q. If there -- are you only involved if the child is removed
15 from both parents?

16 A. No.

17 Q. I'm sorry. Or are there times when you are involved in a
18 case even when a child is left with one or both parents?

19 A. You are right. The second one. And the way that works --
20 I'm sorry. Right. The way that works is, in cases where the
21 child is brought into state custody, but we place the child
22 with one parent or the other, I would work -- I would work
23 with both parents that way, and I would have the child on my
24 case load.

25 Q. Do you know Amanda Mouton?

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1 A. I do.

2 Q. How do you know her?

3 A. She is one of the children on my case load.

4 Q. And when did you become involved in her case?

5 A. In November of last year.

6 Q. November of 2008?

7 A. Yes.

8 Q. Amanda Mouton was assigned a CPS caseworker in April of
9 2008, correct?

10 A. That is correct.

11 Q. Why?

12 A. She was assigned a caseworker because she was removed from
13 the custody of her parents and was taken into the custody of
14 the State.

15 Q. So from April of 2008, the State of Texas had custody of
16 her?

17 A. Correct.

18 Q. And was there another legal caseworker, someone who has
19 the same job responsibilities you do, that had her case from
20 April until November, when you took over?

21 A. Yes.

22 Q. When you became involved with Amanda in November of 2008,
23 what do you do first?

24 A. I meet with Amanda. I talk to therapists, read the --
25 read the case files, so that I know exactly what has been

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1 alleged to have happened to her. I speak with the parent -- I
2 spoke with the parents. I didn't speak with Mr. Mouton in
3 November, but I did with Mrs. Mouton.

4 Q. As part of your investigation or research into the file,
5 did you obtain a copy of Amanda Mouton's birth certificate?

6 A. We do have a birth certificate, yes.

7 MS. BRAUN: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MS. BRAUN:

10 Q. I am showing you what has been marked for identification
11 as Government's Exhibit 9 and ask that you take a look at it.
12 Do you recognize that?

13 A. I do.

14 Q. Is that a certified copy of -- excuse me -- the birth
15 certificate for Amanda Mouton?

16 A. Yes, it is.

17 MS. BRAUN: Government offers Exhibit 9.

18 THE COURT: Any objection?

19 MR. BASILE: I have no objection, Your Honor.

20 THE COURT: 9 is admitted.

21 BY MS. BRAUN:

22 Q. Where was Amanda Mouton born?

23 A. She was born in China.

24 Q. And what is her birthdate?

25 A. Her birthdate is February 4 -- no. Excuse me. February

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1 16th, 1995.

2 Q. Did you learn how Amanda Mouton came to the United States
3 from China?

4 A. I did.

5 Q. How did she?

6 A. She was --

7 Q. Under what circumstances did she get here?

8 A. Mr. and Mrs. Mouton adopted her through an adoption agency
9 in the state of Colorado.

10 Q. And was she adopted in 1997?

11 A. Yes.

12 Q. And from 1997 until April of 2008, did she live with both
13 Steve Mouton and Margarite Mouton?

14 A. Yes.

15 Q. Is Amanda Mouton a United States citizen now?

16 A. No, she is not.

17 Q. Why not?

18 A. I don't know why not. I mean, the short answer would be
19 that her parents did not seek citizenship for her.

20 Q. Is that something they would normally be given information
21 about from the adoption agency?

22 A. Yes. As a matter of fact, I called the adoption agency.
23 We were trying to get a passport for Amanda to travel with her
24 aunt and uncle, and we were having difficulty getting a
25 passport, so I ended up calling the adoption agency, who had

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1 sponsored the adoption, and they said that they had given the
2 Moutons the information to attain citizenship for their
3 adopted child and had never, according to their records, had
4 not followed through.

5 They said typically, adoptive parents, they ask the
6 adoptive parents to get back with them so they can complete
7 their records regarding the adoption and the citizenship, and
8 they did not contact the adoption agency after -- after taking
9 Amanda.

10 Q. Is this -- have you recently found out that she is not a
11 U.S. citizen?

12 A. Very recently.

13 Q. You were trying to get a passport for her only in the last
14 few weeks; is that correct?

15 A. Within the last month, month and a half.

16 Q. Have you been able to speak to either Margarite Mouton or
17 Steve Mouton about why they didn't file or why they didn't
18 secure her citizenship?

19 A. I have not spoken with Mr. Mouton. Mrs. Mouton, I spoke
20 with her on two occasions. One was to find the passport,
21 because she -- somehow, we were under the impression that one
22 existed.

23 And she said that Mr. Mouton kept all of their
24 records and she didn't know where they were. When I called
25 her subsequently, she -- she seemed to realize, when I was

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1 explaining what I was looking for, in terms of a citizenship
2 card, it has got specific lettering and coloring, she said
3 that she had never seen that before, and I asked her
4 specifically if they had gone through the process, and she
5 said she didn't -- didn't think that they had.

6 Q. Have you ever met with Mr. Mouton?

7 A. I have on one occasion.

8 Q. And what was the purpose of that meeting?

9 A. I found out that he was -- we had thought he was
10 incarcerated in another facility. I found out that he was
11 incarcerated in Seguin, which is close, and I -- although he
12 had not elected to work any services on his service plan, it
13 is customary for a caseworker to meet with the parents, so I
14 went to the jail and talked to him for probably 45 minutes.

15 Q. Have you worked with Margarite Mouton?

16 A. Yes.

17 Q. What was the purpose of that?

18 A. The purpose was to try to help Margarite work her services
19 on her family plan of service that was developed, to help her
20 to be able to be reunified with the child.

21 Q. From the time Amanda was taken out of the house in April
22 of 2008, was there a plan to reunify her with Mr. Mouton?

23 A. Let me -- let me explain how the CPS works. We always
24 have a plan initially, unless we get some aggravated
25 circumstances, which we didn't in this case. We always begin

LANDRUM - DIRECT

1 the case with the thought to reunify.

2 Certainly, because Mr. Mouton was incarcerated, you
3 know, a reasonable thought would be that she would not be able
4 to return to him, but we did offer him the service plan, and
5 we actually have a lot of fathers who are in prison who seek
6 services through prison or jail. So while I don't think we
7 thought we would be able to reunify, just based on his
8 incarceration, the plan began that way, that we would reunify
9 her with the family.

10 Q. And he was offered services?

11 A. He was.

12 Q. But he opted not to take any of them?

13 A. Yes.

14 Q. So for a while, you worked on possible reunification
15 between Amanda and her mother, Margarite Mouton?

16 A. Yes.

17 Q. At some point, did that plan for reunification end?

18 A. Yes.

19 Q. When was that, if you remember?

20 A. I am going to say it was around April or May. Maybe
21 earlier than that, in the spring.

22 Q. And what is the status of Steven Mouton's parental rights
23 right now?

24 A. They have been terminated.

25 Q. Did he voluntarily relinquish those?

LANDRUM - DIRECT

1 A. Yes, he did.

2 Q. What about Margarite Mouton? What about her parental
3 rights?

4 A. Her parental rights have been terminated as well.

5 Q. Did she voluntarily relinquish those?

6 A. Yes, she did.

7 Q. When Amanda was first removed from the Mouton's home in
8 April of 2008, she was placed in foster care, correct?

9 A. Correct.

10 Q. How long did she stay in foster care?

11 A. She was in a foster home from April until -- of '08 until
12 August 15th of '08.

13 Q. And in August of '08, where did she get moved to?

14 A. She was moved to her paternal aunt and uncle's home.

15 Q. And is she currently living there?

16 A. Yes.

17 Q. How is she doing?

18 A. She is doing very well. She is doing very well.

19 Q. Have you met with Amanda on a number of occasions?

20 A. Yes.

21 Q. Do you talk to her on a regular basis?

22 A. Yes.

23 Q. Would you recognize her in photographs?

24 A. Yes.

25 MS. BRAUN: May I approach, Your Honor?

LANDRUM - DIRECT

1 THE COURT: You may.

2 MS. BRAUN:

3 Q. I am going to show you what has been marked for
4 identification as Government's Exhibits 10 through 15 and ask
5 that you take a look at those.

6 A. That is Amanda.

7 Q. You recognize those?

8 A. I do. I do.

9 Q. All right. And that is Amanda Mouton in each one of the
10 photographs?

11 A. In each one, yes.

12 MS. BRAUN: Government offers Government's Exhibits
13 10 through 15.

14 THE COURT: Any objections?

15 MR. BASILE: I have no objection, Your Honor.

16 THE COURT: 10 through 15 are admitted.

17 MS. BRAUN: Your Honor, I would ask to briefly
18 publish Government's Exhibits 10 through 15.

19 THE COURT: You may.

20 MS. BRAUN: Exhibit 10, 11, 12, 13, 14, and
21 Exhibit 15.

22 I have no further questions.

23 THE COURT: Any questions?

24 MR. BASILE: Just a couple, Your Honor.

25 *-*-*-*-*-*-*-*

LANDRUM - CROSS

CROSS EXAMINATION

BY MR. BASILE:

Q. Is it Ms. Landrum?

A. It is.

Q. And you said you have been a case worker for a couple of years; is that correct?

A. Yes.

Q. Now, you mentioned when they went to the final on this, on this matter with the court, in the state courts, Mr. Mouton signed a voluntary relinquishment; is that correct?

A. Yes.

Q. Isn't it true that in a voluntarily relinquishment, the only grounds listed is that it is for the best interests of the child; is that correct?

A. I don't think that is correct, but I -- the grounds would be relinquishment of rights.

Q. Okay. And that is done voluntarily, right?

A. Correct.

Q. And that is done because the parent thinks that is what is best for the child --

A. Yes.

Q. -- is that correct?

A. Yes.

Q. It is not done because the courts made any finding that the parents have done anything wrong; is that correct too?

LANDRUM - REDIRECT

1 A. That is correct, yes.

2 Q. And, in fact, you stated that no aggravating circumstances
3 were found in this case; is that correct?

4 A. We didn't pursue that.

5 MR. BASILE: I have no further questions, Your
6 Honor.

7 THE COURT: Anything further?

8 MS. BRAUN: Yes, Your Honor.

9 *-*-*-*-*-*-*

10 REDIRECT EXAMINATION

11 BY MS. BRAUN:

12 Q. You said you didn't pursue the aggravated circumstances in
13 this case. Is that because both parents did voluntarily
14 relinquish their parental rights?

15 A. No. I honestly do not know why. It wasn't my case at
16 that time. We would have had to ask the judge to pursue that
17 line at the adversary hearing within the first month of --
18 about the first month of the case, and I don't know why they
19 didn't -- they chose not to.

20 Q. So in this case, both parents voluntarily relinquished
21 their parental rights. Had they not, what would have
22 happened?

23 A. We would have gone to trial. We have -- it is called a
24 trial on merits, where the State presents its evidence as to
25 why we believe it is in the child's best interests to have the

LANDRUM - RECROSS

1 judge grant termination of rights, or a jury, if they've
2 elected for a jury trial. And then the defendants, you know,
3 get to give evidence as to why that isn't in the best
4 interests, and then a decision is made.

5 MS. BRAUN: Thank you. Nothing further.

6 THE COURT: Anything further?

7 MR. BASILE: Just one or two, Your Honor, just as
8 follow-up.

9 *-**-*-**-*-**

10 RECROSS EXAMINATION

11 BY MR. BASILE:

12 Q. At a trial that is done, there have to be actual grounds
13 shown as to why a child's -- or a parent's rights should be
14 terminated; isn't that correct?

15 A. Correct.

16 Q. And there were no actual grounds in this matter because
17 they signed an authorization voluntarily giving up their
18 rights; is that correct?

19 A. Well, it didn't go to trial, because they voluntarily
20 relinquished their rights before they went to trial.

21 Q. So there were no grounds found why the rights were
22 terminated by any court?

23 A. No, because we didn't have a trial, correct.

24 MR. BASILE: No further questions, Your Honor.

25 MS. BRAUN: Nothing further. Thank you.

COX - DIRECT

1 THE COURT: You may step down. Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: Your next witness.

4 MS. WANNARKA: Special Agent Charlie Cox.

5 COURTROOM DEPUTY: Could you raise your right hand.

6 (Oath administered to the witness.)

7 COURTROOM DEPUTY: Thank you.

8 MS. BRAUN: Your Honor, may Ms. Landrum stay in the
9 courtroom now, that she has been excused from the testimony?

10 THE COURT: Any opposition to that?

11 MR. BASILE: If she is not going to be recalled as a
12 witness, I have no problem with that.

13 MS. BRAUN: She will not be.

14 THE COURT: She is excused from the rule.

15 MS. WANNARKA: Thanks.

16 *-*-*-*-*-*-*

17 DIRECT EXAMINATION

18 BY MS. WANNARKA:

19 Q. Special agent, good afternoon.

20 A. Good afternoon.

21 Q. Please tell the jury your name.

22 A. My name is Charles Cox.

23 Q. How are you currently employed?

24 A. I am currently a special agent with the Federal Bureau of
25 Investigation here in San Antonio, Texas.

COX - DIRECT

1 Q. What are your duties?

2 A. I am assigned as a computer forensic examiner for the San
3 Antonio Division of the FBI. In those duties, I am charged
4 with basically providing forensic analysis of digital media
5 for the FBI cases that are -- as requested.

6 Q. Tell the jury a little bit about your educational
7 background with regard to your current certifications as a
8 computer examiner.

9 A. I have a bachelor of arts in economics from Vanderbilt
10 University. Prior to joining the FBI, I was employed as a PC
11 hardware and software support analyst, providing hardware --
12 basically maintenance and repair for corporations, until I
13 started with the FBI in 1998.

14 After my employment with the FBI as a special agent,
15 I was tasked with investigating crimes of cyber and
16 counter-terrorism investigations. As part of that, I was also
17 then tasked or actually requested to join the computer
18 analysis response team, which is the Bureau's forensic
19 analysis division.

20 Back -- that was in 2000. Subsequent to that,
21 enrollment in the program, I have attended over 500 hours of
22 training in computer forensics, hardware, computer hardware,
23 software design, the forensic analysis, preservation and
24 presentation of digital data in a readable manner to the case
25 agents and investigators.

COX - DIRECT

1 I have also obtained certification through the FBI
2 as a certified forensic examiner in computers, cellphones,
3 personal digital assistants, and other digital media, as
4 presented in investigation. I have testified in -- I believe
5 this would be my fifth testimony in federal court as an
6 expert.

7 Q. Have you also participated in the training of new computer
8 examiner agents?

9 A. Yes. Part of our certification process, I have on-the-job
10 trainees that are entering into the program. I am tasked as a
11 coach, basically. We have a very rigorous certification
12 process, that it took me approximately two years to obtain the
13 certification, once I had begun the process.

14 We have basically -- beyond the technical classes,
15 we also have, basically, presentations, sort of how to relate
16 technical terms in more of an understandable format. We also
17 have yearly proficiency examinations, where we are tested by
18 our FBI headquarters to make sure that we are following our
19 standards and quality assurance manual.

20 MS. WANNARKA: Your Honor, at this time, the
21 government tenders Special Agent Cox to the Court as an expert
22 in computer forensics.

23 THE COURT: Any opposition?

24 MR. BASILE: No opposition, Your Honor.

25 THE COURT: He is so recognized.

COX - DIRECT

1 BY MS. WANNARKA:

2 Q. Special Agent, I would like to turn your attention to the
3 case at hand. Were you asked to analyze some media cards in
4 this case regarding Stephen Mouton?

5 A. Yes, ma'am. I was.

6 Q. What is a media card or a camera card?

7 A. Basically, a media card, in this instance, is a digital
8 storage device. It is -- some people would refer to it as a
9 memory stick, a small card used to store digital data, in this
10 instance, from a digital camera, primarily, in this case. A
11 digital camera takes a picture, no longer using film, as we
12 used to know it, and stores the digital file on this digital
13 card, enabling us to transfer it between the camera, the
14 computer, store it for future use, in that manner.

15 Q. What is the procedure for analyzing a media card?

16 A. As part of our standard operating procedures and quality
17 assurance, our first step, we will inspect and inventory all
18 of the evidence that is presented to us. We will then, using
19 write-blocking software and hardware devices to make sure we
20 do not change the original evidence in any way, we will make a
21 digital image or a copy of the data contained on these media
22 devices.

23 And as part of that copying, yes, we generate an
24 MD5 hash. It is a digital signature, if you will, of the data
25 contained on that device. Any change or if the data is

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1 altered in any way, that MD5 hash will not match anymore, and
2 we will know something has happened. But we will obtain this
3 MD5 hash at the beginning of our examination.

4 We will then return the original evidence back to
5 our evidence storage, and we will then examine the digital
6 copy that we have, that we have identified, to make sure that
7 the MD5 hashes match, so that it is an exact copy of the
8 original.

9 Q. How many media cards were you asked to analyze?

10 A. I was asked to analyze three digital media cards in this
11 examination.

12 Q. And when you did so, did you follow the procedure that you
13 just told the jury?

14 A. Yes, ma'am. I did.

15 Q. When you received the evidence in this case, who did you
16 receive the evidence from?

17 A. I received the evidence from the case agents, Larry Baker,
18 and that was how I obtained the evidence in this matter.

19 Q. And had they just seized that evidence from a search
20 warrant from the defendant's home?

21 A. I really don't know what time they got it. I just know
22 that I received it in our chain of custody from Special Agent
23 Baker.

24 Q. When you received that property, what all did you receive?

25 A. I received a camera bag, a black, leather camera bag that

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1 has one main compartment that contained a camera, power
2 supply, I think an extra battery, some lenses, and on the
3 outside had two pockets, one on either side, one down the long
4 side.

5 And inside the bag was the digital camera. Inside
6 that camera was a digital media card, and then one of the side
7 pockets was two media card holders containing a media card in
8 each one.

9 Q. I would like to call your attention to the camera that is
10 there on the witness stand, which has been marked Government's
11 Exhibit 32, and I will ask you to look at that camera and then
12 tell the jury if you recognize it.

13 A. Yes, ma'am. I do. This is the camera that was contained
14 in the camera bag. As a part of our inventory process, we
15 place a label identifying with our laboratory number, in this
16 instance, QSA-1, with the case number, a date and also my
17 initials.

18 Q. Where was that camera manufactured?

19 A. This camera was made in Taiwan.

20 Q. And also, I believe on the witness stand is Government's
21 Exhibit No. 7, and I will ask you to look at that.

22 Was that one of the media cards that you analyzed in
23 the grouping of three?

24 A. Yes, ma'am. This was one of the cards, in its container,
25 in the side pocket. It also has the labeling that I was

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1 using. I used QSA-1. I used an underscore 2. The three
2 media cards were underscore 1, underscore 2, and underscore 3,
3 and this one is underscore 2. And, once again, it contains
4 our case number, the date, and my initials on it as well.

5 Q. Where was that camera card, Government's Exhibit 7,
6 manufactured or made?

7 A. This card was manufactured in China. It actually has
8 China on the side.

9 MS. WANNARKA: Your Honor, the government offers
10 Government's Exhibits 32 and 7.

11 THE COURT: Any objection?

12 MR. BASILE: No objection, Your Honor.

13 THE COURT: 7 is admitted. 32 is admitted.

14 BY MS. WANNARKA:

15 Q. Of the three media cards you analyzed, did one of them
16 contain child pornography?

17 A. Yes, ma'am, it did.

18 Q. And is that Government's Exhibit 7?

19 A. Yes, ma'am. It is.

20 Q. Did you create a report or was a report generated by
21 virtue of the FTK software you used to conduct the analysis?

22 A. Yes, ma'am. In order for me to complete this analysis,
23 the digital image that I made of this media card was processed
24 using a software, one of our approved tools from a company
25 called Access Data, named Forensic Toolkit, which will

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1 retrieve deleted files, will also retrieve files that are in
2 the drive free space, and basically presents it in a more
3 readable format, that we can then create a report from that,
4 so that we can provide it to the investigator, and that is the
5 tool I used for this exam.

6 Q. I am showing you -- or I will be showing you what has been
7 marked Government's Exhibit 8, and I will ask you to take a
8 look at that and tell us if you recognize it.

9 A. Yes, ma'am. That is my report.

10 Q. That is the report that you created from Government's
11 Exhibit 7?

12 A. Yes, ma'am. On the report itself, it actually, as part of
13 the path of the individual images, it has QSA-1 underscore 2,
14 which actually matches up to my labeling and identification of
15 that card.

16 Q. And in your review of that report, is it the original
17 report as it was generated? Has it been altered in any way?

18 A. I have not seen any altercation -- I mean, alterations.
19 It is my report and my original report, yes, ma'am.

20 MS. WANNARKA: Your Honor, government offers
21 Government's Exhibit 8.

22 MR. BASILE: May I have a minute, Your Honor? I
23 would object to the report. It is not same report that was
24 provided to me. The front part is not the same.

25 THE COURT: Why don't you come on up.

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1 (Bench conference, as follows:)

2 MS. WANNARKA: This report has never been provided,
3 because it is a report of child pornography. It is a report
4 of the images that were taken from the media card.

5 THE COURT: It doesn't contain this part which --

6 MR. BASILE: It doesn't contain this part.

7 MS. WANNARKA: I am -- going to offer this part
8 also. I was just interested in offering the images.

9 THE COURT: Which part are you trying to offer? Are
10 you trying to offer the images?

11 MS. WANNARKA: The images.

12 THE COURT: Okay.

13 MS. WANNARKA: I can specify that it is the images.

14 THE COURT: So what part are you objecting to?

15 MR. BASILE: Well, it is not a complete report, if
16 it doesn't have the information that shows how he got the
17 images --

18 MS. WANNARKA: If I would have offered that, you
19 would have objected to that as hearsay, because that is what
20 he just testified to. I mean, I will be happy to offer that.

21 THE COURT: Six, seven, and eight is consisting of
22 what?

23 MS. WANNARKA: Eight are the images of child --

24 THE COURT: I know that, but what is confusing me is
25 you are wanting to also now add on to this or not?

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1 MS. WANNARKA: No, I do not want to.

2 THE COURT: Okay.

3 MS. WANNARKA: I am just trying to appease --

4 THE COURT: What is your objection?

5 MR. BASILE: My objection is that the report is not
6 a complete report that he has. It is just bits and pieces,
7 just images here, which -- this is the actual report that I
8 was provided.

9 THE COURT: So you believe the more accurate
10 representation of 8 is plus this?

11 MR. BASILE: Yes, Your Honor.

12 THE COURT: What is your response to that?

13 MS. WANNARKA: Your Honor, my response would be I
14 would like to reword what the images are. I don't need that
15 in. I need the images in, so I would reword or have him
16 clarify that the report is of the child pornography images and
17 the metadata.

18 THE COURT: Why don't you go back and let's clean it
19 up.

20 MS. WANNARKA: Okay. Thank you.

21 (End of bench conference.)

22 BY MS. WANNARKA:

23 Q. Special Agent Cox, with regard to Exhibit 8, this report
24 is essentially a listing of the child pornography images that
25 you recovered during your forensic analysis; is that correct?

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1 A. Yes, ma'am.

2 Q. It is not a detailed script of every step you took and
3 every time you checked evidence out? It is merely just a
4 report or a culmination of the images you recovered?

5 A. Yes, ma'am. That report, as submitted, is basically the
6 compilation of the images that came from that forensic
7 analysis. The forensic analysis actually can generate --
8 recover documents, things like that nature, which were not in
9 this event. But for presentation in a more readable format to
10 the case agent, I basically print out a report of the images,
11 which were the child pornographic images and others recovered
12 from that media card.

13 Q. And so if I represented it as a general report, that would
14 have been maybe an overstatement? That is, in fact, just the
15 images and the data regarding the images?

16 A. Correct.

17 MS. WANNARKA: Your Honor, government offers
18 Government's Exhibit 8 into evidence.

19 THE COURT: Any objection?

20 MR. BASILE: No objections, with the clarification,
21 Your Honor.

22 THE COURT: 8 is admitted.

23 BY MS. WANNARKA:

24 Q. Special Agent Cox, when you discovered the child
25 pornography on the media card, Government's Exhibit 7, did you

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1 find whether or not those images were deleted?

2 A. Yes, ma'am. I did. All of the images on the media card
3 were deleted.

4 Q. Did they have a single deletion date you were able to
5 recover?

6 A. Yes, ma'am. They do show a -- all of the -- there are 134
7 graphic images that were recovered on this card that were
8 deleted, and they all show a final access date, which is
9 basically the last time they were accessed to be deleted,
10 because no other action would be taken by the computer once
11 they are deleted. But the final date is October 16th, 2007.

12 Q. Were you able to determine what camera took those pictures
13 on Government's Exhibit 7?

14 A. Yes, ma'am. As part of these images -- and whenever you
15 take a picture with a digital camera now, the camera actually
16 will include in the graphic file basically sort of the
17 information about the camera. It will store the camera's
18 make, the type of camera.

19 It will actually tell the date, the time the
20 photograph was taken, even the aperture, all of the camera
21 settings. And a lot of this is used as people share digital
22 pictures to try and -- photography buffs do that.

23 So all of this information is automatically encoded
24 into the files, and they were on these files as well. Each
25 and every one of them had the same, as we call it -- you may

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1 have heard of metadata. In this information, it is EXIF data,
2 that contained all of the same information, which all pointed
3 to a Canon EOS Digital Rebel camera.

4 Q. And by the way, what kind of camera is Government's
5 Exhibit 32?

6 A. This is a Canon Digital, Digital Rebel EOS camera. It's
7 that same type.

8 Q. Of the images that you recovered on Government's Exhibit
9 7, how many of them were child pornography or children engaged
10 in sexually explicit conduct?

11 A. There were 73 images of children and sexually explicit.

12 Q. What is a child pornography series?

13 A. Child pornography series is generally a collection of
14 photographs taken -- the easiest way to sort of explain it is
15 where you will start with a child starting possibly clothed,
16 or basically sort of like a time lapse photography series, a
17 general act. So starting with a child possibly clothed and
18 then in various stages of unclothing and then the various sex
19 acts.

20 Q. In your training and experience, were the 73 pictures of
21 child pornography that you recovered from Government's Exhibit
22 7 part of the same child pornography series?

23 A. There were a couple of indicators that indicated to me
24 that they were part of a couple of distinct series. Number
25 one is that they did represent the progression of a child in

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1 various states of undress, from being partially clothed to
2 nude, and then also the sex acts at the end. But also, the
3 dates, the modification dates or the dates of the photographs
4 were showing basically about -- different times, but within
5 seconds of being taken from each other.

6 So all of the times and dates are very close, and I
7 believe there are three distinct dates, but each of those
8 dates, the times are very close together, and they seem to be
9 sequential and, of course, the camera will also number the
10 images automatically, and these images also have a sequential
11 photo number.

12 Q. And without showing those photos at this time, are there
13 images of a young girl being penetrated?

14 A. Yes, there are.

15 MS. WANNARKA: I will pass the witness.

16 THE COURT: Mr. Basile?

17 MR. BASILE: Yes, Your Honor.

18 *-*-*-*-*-*-*

19 CROSS EXAMINATION

20 BY MR. BASILE:

21 Q. Is it Agent Cox; is that correct?

22 A. Yes, sir.

23 Q. All right. And you were asked to look at, I think you
24 said, three media cards; is that right?

25 A. Yes, sir.

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1 Q. All right. And the media card that you just finished
2 testifying about was -- which is marked as Government's
3 Exhibit No. 7?

4 A. 7, yes, sir.

5 Q. Is that also shown on the report that you prepared?

6 A. Yes, sir.

7 Q. It is not on that report, but the other one?

8 A. Not on this one right here.

9 Q. Did you prepare a different report or an additional
10 report?

11 A. Those -- well, the overall report, I believe that you
12 have, is my final report of the examination of the three media
13 cards, but there are -- there were printouts of the graphics
14 from each of those other cards as well, yes.

15 Q. So there is a report prepared that explains what you did
16 and how you did it?

17 A. Yes, sir.

18 Q. And then the report you have there is basically the
19 information that you say you found on the card; is that
20 correct?

21 A. Well, this is a printout of my -- a portion of my complete
22 report, because this actually even has the heading of
23 bookmark. As part of the preparation of the report, we go
24 through and we can bookmark different sections of the graphics
25 or images, data or documents, however we want, and then we

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1 will include that all into our final product, which is a CD or
2 DVD, that we will then provide back to the case agent, as well
3 as the written report, which has more of a process of how we
4 obtained our results and the steps we took.

5 Q. And that report would show what you looked at, which is a
6 Canon camera; is that right?

7 A. Correct.

8 Q. And then three different media cards?

9 A. Correct.

10 Q. And what kind of media cards are these called?

11 A. These are -- the form factor is a compact flash card,
12 which is the size -- they were all compact flash cards. This
13 was a Sandisk. I can't remember the other two types. This
14 one is a 256-megabyte. I know one of them was a one-gigabyte
15 card.

16 Q. And if I was to tell you it shows on here you have two 256
17 megabytes and one gigabyte card --

18 A. Correct.

19 Q. -- would that refresh your memory?

20 A. Yes, sir.

21 Q. And you said out of the three that you examined, you found
22 images on one of them?

23 A. Correct.

24 Q. And all of those images, as far as you could tell, had
25 been deleted by the time you looked at them, or shown to you;

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1 is that correct?

2 A. On this card specifically -- I would have to look at my
3 report for the other ones, but on this card specifically, yes,
4 all of those images were deleted.

5 Q. And are you able to give us a date?

6 A. By looking at the last access date, which was 10/16 of
7 2007, that would have been the last time that the computer
8 would have accessed or time stamped those. After that, once
9 the files were marked as deleted, then the operating system
10 would basically -- it is not going to do anything. So that,
11 by taking that date as the last date that those files were
12 actually touched in the process of the deletion.

13 Q. Can you tell by that whether they were actually deleted
14 while they were still in the camera?

15 A. No, I cannot.

16 Q. So you don't know whether those actually were ever loaded
17 up to any type of computer, do you?

18 A. Correct.

19 Q. There is no way of telling by looking at the disk, is
20 there?

21 A. Correct.

22 Q. And it is possible in the camera to delete them directly;
23 isn't that correct?

24 A. Yes, sir. It is.

25 Q. Can you tell by looking at the photographs whether any

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1 pictures were taken out of sequence? Let me rephrase the
2 question.

3 A. Well, okay.

4 Q. When you have a camera, a digital camera to take
5 pictures --

6 A. Correct.

7 Q. -- and you delete a few of the pictures, isn't it true
8 that they aren't always -- the new pictures you take don't
9 always stay in the same order?

10 A. Generally, they will start up wherever the next number is.
11 Even if you have deleted them, they will start back up again.

12 Q. But that spot that is deleted on the card, is that --
13 there is still an open spot on the card; isn't that correct?

14 A. Correct.

15 Q. And the new picture could then be put into that spot when
16 you take a picture, right?

17 A. Correct.

18 Q. So is there any way of telling you on that digital card
19 you have --

20 A. Uh-huh.

21 Q. -- whether or not any of those photographs had been taken
22 out of order?

23 A. Basically, the only way I would be able -- well, there is
24 no way for me to tell, other than looking -- looking at the
25 file names. Once again, the file names, because they have

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1 been deleted, the actual first character of the file name is
2 now an exclamation point, but it then continues MG underscore,
3 and here are the first file numbers, 3103, and then it
4 continues sequentially, so possibly looking at some of the
5 different ones -- if it possibly gets out of sequence, maybe.
6 It is sort of hard to tell exactly what you are asking, but --
7 Q. And is there any way of telling -- you told us the date
8 that they were deleted. Is there any way of telling us the
9 date that they were taken?

10 A. Well, the only other date that is stored on this, these
11 files are a modified date, which is -- like I said, there are
12 three separate dates and times. They are stored March of
13 2007, August the 9th of -- it is March 7th, 2007, August 9th
14 of 2007, August 29th of 2007.

15 Those are the only ones I was able to get actual
16 time and date information off of. Some of the other files are
17 what we call carved files. Those are files that have been
18 retrieved from an area that has been previously used but is no
19 longer used, and that is, once again, where we look at the
20 header information.

21 The first few bites of a file basically tells the
22 computer what kind of a file it is, so even if you change the
23 extension of the file, it will always know that it is a
24 picture or a document or something like that, and so our -- as
25 part of our process, the software will go through and retrieve

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1 those files, but no date or time information is retrieved with
2 those.

3 MR. BASILE: May I have just a minute, Your Honor?

4 BY MR. BASILE:

5 Q. In your report, I see that you mentioned some other type
6 of storage. One was a DVD media that you just testified to,
7 is that correct, when you were talking about derivative
8 evidence detailed in the report?

9 A. Derivative evidence is basically how I store the evidence
10 that I have derived from the camera and the card. Those are
11 the ones that I make, so derivative evidence is my CD that I
12 copied --

13 Q. So that is nothing you were looking at, as far as anything
14 with Mr. Mouton?

15 A. No, sir. Those were the derivative of the -- so,
16 basically, what I do is I copy them off of here, so that I
17 have a means to preserve it, as part of our derivative
18 evidence, not original evidence. It becomes derivative
19 evidence, and that would be that CD or DVD.

20 MR. BASILE: If I could have a minute with my
21 client, Your Honor.

22 THE COURT: You may.

23 BY MR. BASILE:

24 Q. While you were viewing and looking through the media
25 cards, there is no way to actually tell who actually took the

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1 photographs, is there?

2 A. No, sir.

3 Q. So anybody who had access to that camera could have used
4 that to take photographs?

5 A. Yes, sir.

6 Q. And anybody, of course, who had access could have deleted
7 them too; is that right?

8 A. Yes, sir.

9 MR. BASILE: I have no further questions, Your
10 Honor.

11 THE COURT: Anything further?

12 MS. WANNARKA: No, Your Honor.

13 THE COURT: You may step down. Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Why don't the lawyers come on up.

16 (Bench conference, as follows:)

17 THE COURT: Just one more witness?

18 MS. WANNARKA: One more.

19 THE COURT: How long do you think it is going to
20 last?

21 MS. WANNARKA: It is going to take a while.

22 THE COURT: Okay. Because somebody told the
23 courtroom security office that they have to leave by 5:00.

24 MS. WANNARKA: Just one more --

25 THE COURT: Let's take a break, and I will let them

1 go and -- now, while you are up here -- and we will talk about
2 that in just a minute. Okay.

3 (End of bench conference.)

4 THE COURT: Ladies and gentlemen, we are going to
5 take an early break today. Someone told the courtroom
6 security officer you have to be out of here by 5:00. This
7 next witness will take a little longer, so I don't want to
8 push us past 5:00.

9 Ladies and gentlemen, I anticipate that we may be
10 finished as early as by tomorrow, so we are going to go ahead
11 and stop now. I want to repeat my instructions to you, just
12 so there is no misunderstanding. Do not do any homework of
13 any type.

14 Don't get on the Internet and type in any words or
15 phrases or names or anything like you have heard here in this
16 case. Just go about your normal business. You know, do
17 whatever you normally do on the computer, but don't do
18 anything related to this case.

19 Don't engage in any chats or conversations with
20 anybody, your loved ones, family members, coworkers about this
21 case. It is not so much I am worried about what you are going
22 to say, but I am more worried about what they may tell you,
23 and all of a sudden, you are hearing things that are coming
24 from outside of the testimony in this case that will cause a
25 mistrial. So don't have any discussions with folks about this

1 case.

2 Your only job is to leave here safely and come back
3 tomorrow morning, and we will start up at 9:00 o'clock in the
4 morning, so if you will just arrive a couple of minutes before
5 9:00. That is your only assignment is to come back.

6 Does anybody have any questions regarding my
7 instructions? Okay. We will see you all in the morning.

8 All rise for the jury.

9 (Jury leaves courtroom.)

10 THE COURT: Please be seated.

11 Will you do me a favor? That door doesn't close. I
12 am waiting to hear the click. Ensure that. Thank you.

13 Okay. I am expecting one more witness from the
14 government?

15 MS. BRAUN: That is correct, Your Honor.

16 THE COURT: And how long do you think that will
17 last?

18 MS. BRAUN: He is our longest witness. Maybe 45
19 minutes.

20 THE COURT: Okay. You are not required to say
21 anything, but I mean, just in terms of presentation time, do
22 you think you are going to place any witnesses on the stand?

23 MR. BASILE: I don't think so, Your Honor.

24 THE COURT: Okay.

25 MR. BASILE: But I will discuss this with my client

1 some more.

2 THE COURT: And the only reason I am asking that is
3 I want to sort of figure out where we are at in terms of the
4 charge, and so let's -- this is not the jury charge, so this
5 is -- I just want to go with this charge in a draft format
6 with you, and then we will take formal objections to the
7 charge tomorrow.

8 But considering what you are both telling me, then
9 as I make edits tonight, it looks that on page 2, stipulated
10 facts, there will be no stipulated facts in this case; is that
11 correct?

12 MR. BASILE: I don't know of any stipulated facts,
13 Your Honor.

14 THE COURT: Okay. Yes. So I will take out the
15 paragraph regarding stipulated facts. I will go through the
16 charge with the expectation that the defendant is not going to
17 testify; is that correct?

18 MR. BASILE: That is where we are right now, Your
19 Honor. I will confirm it some more. If I need to let the
20 Court know before I leave, I will.

21 THE COURT: I might do version 1 and version 2, just
22 to be on the safe side there.

23 With regard to character evidence, are we going to
24 hear any evidence of good character?

25 MR. BASILE: No, Your Honor.

1 THE COURT: Okay. So the character evidence is
2 going to be deleted. I did not hear any evidence of
3 impeachment by prior inconsistencies; is that correct?

4 MS. BRAUN: That is correct.

5 THE COURT: And I guess I will not hear any evidence
6 of impeachment by prior inconsistencies; is that correct?

7 MR. BASILE: That is probably correct, Your Honor.

8 THE COURT: Yes. Okay. I am going to take that
9 paragraph out. Impeachment by prior conviction, I didn't hear
10 anything, and we won't hear anything tomorrow, I am assuming.

11 MR. BASILE: That is correct, Your Honor.

12 THE COURT: Okay. So that is coming out. And then
13 the next paragraph, witnesses other than defendant, that also
14 will come out.

15 Impeachment by evidence of untruthful character. I
16 didn't hear anything like that either, so that is coming out.

17 Okay. Similar acts, that gets deleted.

18 And then page 8, confessions, statements,
19 voluntariness. There was no confession, so that paragraph
20 comes out.

21 MR. BASILE: Well, Your Honor, there might be more
22 to that tomorrow.

23 THE COURT: Okay. Hold on. What --

24 MS. BRAUN: With regard to the confession, it is
25 government's position that the defendant confessed both to

1 Special Agent Larry Baker and to Sean Hiler.

2 THE COURT: And the letters. Oh. And the verbal
3 admissions. That's right. Yes.

4 MS. BRAUN: And in the letters. There are multiple
5 confessions.

6 THE COURT: Yes. Okay. That stays in. On page 8,
7 at the top, the knowingly instruction, my highlighted language
8 there, the second part of that, I don't believe that is
9 appropriate to this case. I am contemplating just having the
10 first sentence.

11 MS. BRAUN: No objection from the government, Your
12 Honor.

13 THE COURT: Yes. The other one is more related to
14 drug issues. Okay. Okay. So I will make those edits and
15 then we pick up at 9:00.

16 Anything else we need to talk about before we
17 adjourn for the day?

18 MS. BRAUN: Nothing from the government.

19 MR. BASILE: Not at this time, Your Honor. I may
20 have some objections to the wording on some things in the
21 charge and some suggestions.

22 THE COURT: Right. Yes. This is not the formal
23 charge, so I suggest that both of you all, in light of what I
24 just did here, then also look at the remainder of this charge
25 to make sure that you are satisfied that it is correct, and I

1 will hear any comments or suggestions or edits or deletions
2 that you want tomorrow.

3 MR. BASILE: Yes, Your Honor.

4 THE COURT: So your homework is to read this. Okay.
5 We will see you in the morning.

6 *-*-*-*-*-*-*-*

1 *-*-*-*-*-*-*-*

2 UNITED STATES DISTRICT COURT)

3 WESTERN DISTRICT OF TEXAS)

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.

6 I further certify that the transcript fees and format comply
7 with those prescribed by the Court and the Judicial Conference
8 of the United States.

9 Date signed: April 22, 2010.

10
11 /s/ Karl H. Myers

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